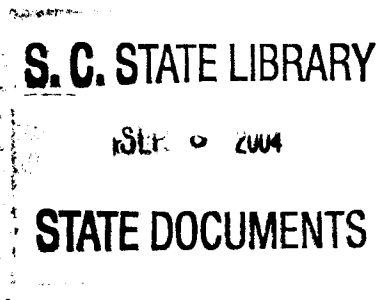


B8595HC
2. C55-3
Copy 1

A Review of the
South Carolina
Consolidated Procurement Code
2002/2003

Voight Shealy
State Materials Management Officer
Budget and Control Board
1201 Main Street, Suite 600
Columbia, SC 29201
803-737-0635



South Carolina
Consolidated Procurement Code
A Brief History

The South Carolina General Assembly enacted the Consolidated Procurement Code (Code) in 1981.¹ The General Assembly stated its intent in enacting the Code as its purposes and policies, which in their current form, are as follows:

- (a) to provide increased economy in state procurement activities and to maximize to the fullest extent practicable the purchasing values of funds while ensuring that procurements are the most advantageous to the State and in compliance with the provisions of the Ethics Government Accountability and Campaign Reform Act;
- (b) to foster effective broad-based competition for public procurement within the free enterprise system;
- (c) to develop procurement capability responsive to appropriate user needs;
- (d) to consolidate, clarify, and modernize the law governing procurement in this State and permit the continued development of explicit and thoroughly considered procurement policies and practices;
- (e) to require the adoption of competitive procurement laws and practices by units of state and local governments;
- (f) to ensure the fair and equitable treatment of all persons who deal with the procurement system which will promote increased public confidence in the procedures followed in public procurement;
- (g) to provide safeguards for the maintenance of a procurement system of quality and integrity with clearly defined rules for ethical behavior on the part

¹ Act No. 148 of 1981.

of all persons engaged in the public procurement process; and
(h) to develop an efficient and effective means of delegating roles and responsibilities to the various government procurement officers.

The General Assembly accepted the direction of many states of that day and patterned our Code after the Model Procurement Code for State and Local Governments (Model),² which was prepared by the American Bar Association (ABA). South Carolina was the sixth of sixteen states to adopt the Model as the core of its procurement code. Since its enactment, the Code has been amended a number of times in minor ways and in significant fashion. Most notably, the Code was amended in 1993 with enactment of the State Government Accountability and Reform Act³ and in 1997 with enactment of the Budget and Control Board's (Board) Procurement 2000 Project recommendations.⁴

² Copyright 1979, American Bar Association.

³ Act No. 178 of 1993.

⁴ Act No. 153 of 1997.

The Current State of the Code

Project Objectives

As the Materials Management Officer, I serve as the chief procurement officer for the State. In my capacity, I manage the state's central procurement office, set procurement policy for the State, oversee the Audit and certification program, and hear procurement protests, settle contract controversies, and suspend or debar problem vendors from receiving contract awards.

In November 2001, I initiated a project to evaluate the effectiveness of the Code and to align its requirements with the supporting regulations, MMO policies and business processes, and our internal practices. When we began the project, we were of the opinion that the current Code is generally sound, well crafted procurement legislation. However, we felt a need to confirm that opinion with our customers (state agencies) and stakeholders (vendors, contractors, architect-engineers, attorneys, etc.).

The long-term objectives of this project were to: (1) evaluate the Code's effectiveness in the business climate of the 21st Century and update it for today's best procurement practices, (2) assess stakeholder/customer content or discontent with the Code and state procurement processes, (3) submit recommendations for any amendments to the Code to the General Assembly for its consideration during the 2003 session, (4) develop a strategic plan for the new Procurement Services Division of the Board, which includes MMO, aligning our strategic direction with the Code's, (5) draft and submit complimentary

regulations supportive of the new Code and submit them to the General Assembly for consideration, and (6) align MMO processes and practices with the new Code and regulations.

For the purposes of this CPM project, due to time limitations, the objectives are (1) – through (3) above. We are committed to completing the other objectives listed above, but will do so after submission of this project paper.

A number of events and anniversaries warrant this project. First, the Code has been in effect for more than twenty years. Second, the ABA updated its Model, which formed the basis for our Code, in 2000.⁵ Third, when the Board succeeded in its Procurement 2000 Project in 1997, Helen Zeigler, then Director of the Office of General Services, committed to revisiting the Code every four to five years. This project is not only a timely reassessment of the Code; it is in keeping with that commitment. Finally, recent budget cuts have ravaged the MMO staff, reducing it to a ghost of its former self. For example, in 1993, the State Procurement Office, a component of MMO, consisted of 19 full time equivalent positions. In 2003, the State Procurement Staff consists of 10 full time positions. In the past twelve months alone, MMO has lost seven full time positions. In order to survive, MMO must seek additional regulatory relief from the requirements of the Code and delegate additional authority to state agencies.

⁵ Copyright 2000, American Bar Association.

Research Plan and Resources

Utilized During the Project

The following published resources were utilized during the project:

- Model Procurement Code for State and Local Governments
- Annotations to the Model Procurement Code for State and Local Governments with Analytical Summary of State Enactments⁶
- The 2000 Model Procurement Code for State and Local Governments
- National Association of State Procurement Officials' (NASPO) Survey of State & Local Government Purchasing Practices, 2001 Edition⁷

I also utilized the National Association of State Procurement Officials' (NASPO) listserv. NASPO is a national association of the chief procurement officers from each state, the District of Columbia, and Puerto Rico. By using the NASPO listserv, I can e-mail a question to every chief procurement officer in the nation in seconds.

While these documents and the NASPO listserv were helpful in benchmarking our recommendations to other states practices, the primary research was accomplished through discussions with the following stakeholder focus groups:

- Information technology vendors
- Construction vendors
- Goods and services vendors

- South Carolina certified minority vendors
- Information technology state agency procurement officials
- Construction state agency procurement officials
- Goods and services state agency procurement officials

The comments recorded from these focus groups were shared and discussed with the following advisory groups:

- Certified state agency procurement directors
- State agency and private sector attorneys who have participated in the State's protest process
- State agency deputy directors and college vice presidents
- State and local government procurement officials
- American Institute of Architects
- Association of General Contractors
- Consulting Engineers of South Carolina
- MMO procurement managers and construction project managers
- Budget and Control Board executive staff

After developing our initial recommendations, we invited all of the participants from the focus groups and advisory groups to participate in a discussion of our recommendations on November 12, 2002. We held two meetings; one for vendors and one for state officials. Nineteen vendors and

⁶ Copyright 1996, American Bar Association

⁷ Copyright 2001, National Association of State Procurement Officials

forty-one state officials attended these meetings. Generally, they validated our recommendations.

Subsequently, I sought out opportunities to discuss our recommendations with virtually anyone who would listen. For example, I made a presentation of the proposed Code changes to the South Carolina Association of Governmental Procurement Officers (SCAGPO) at their annual conference in November 2002. I also spoke to the State Procurement Procedures Committee, a committee of state agency procurement officials created to improve minority vendor participation that is co-chaired by the Governor's Office of Small and Minority Business Assistance and MMO.

Using the input received at these meetings, I held seven meetings with Delbert Singleton, Director of the Procurement Services Division, Michael Thomas, State Engineer, Jimmy Culbreath, State Procurement Officer, Michael Spicer, Information Technology Management Officer, Larry Sorrell, Manager of Audit and Certification, and Keith McCook, Assistant General Counsel, to complete the draft proposals and incorporate the feedback received.

Advancing our recommendations to the Board's executive staff, Delbert Singleton and I held three meetings with Frank Fusco, Executive Director, and Steve Osborne, Chief of Staff seeking their support for our recommendations.

Project Results

Consolidated Procurement Code

The focus and advisory committees confirmed our belief that the Code is still effective public procurement legislation. Focus groups reported high levels of satisfaction with the current Code, but they did express complaints about specific requirements. Additionally, the MMO staff recommended a number of amendments. In order to address their specific complaints and the issues targeted by the MMO staff, we are proposing an omnibus bill of Code amendments to the General Assembly that we hope they will embrace during their 2003 session. An overview of the proposed amendments is included herein as Attachment 1. The complete document is included herein as Attachment 2.

The recommendations fall into four distinct categories. First, we are recommending a number of technical amendments. For example, we are recommending amendments to address some uncertainty about information technology procurements and to adjust the Code for the Board's recent restructuring. Second, we are recommending several very important amendments to lower the cost of products the State purchases, primarily through multi-state cooperative purchases. Third, in order to reduce the administrative costs and time burdens of the Code, we are recommending a number of amendments to reduce paperwork, simplify the process, and delegate additional authority to state agencies. Fourth, in order to enhance minority vendor participation in the State's procurements, we are recommending several

amendments to attract more minority vendors to our doors and allow agencies to consider MBE status in determining certain awards.

Regarding the specific objectives of this project, they will be addressed individually as follows:

Objective no. 1 - To evaluate the Code's effectiveness in the business climate of the 21st Century and update it for today's best procurement practices.

As resources for this objective, I utilized the ABA's 2000 revisions to its Model Code, NASPO's Survey of State and Local Government Purchasing Practices, the NASPO listserv, which connects every state's chief procurement officer, discussions with our focus and advisory groups, and input from staff. We determined that a number of amendments to the Code are necessary here.

Our recommendations emphasize (1) reducing transaction costs for state agencies and private sector suppliers by simplifying the Code's requirements, (2) ensuring that these simplified procedures still protect the public's interests as intended in all public procurement statutes, (3) authorizing more user involvement and authority in order to improve responsiveness to end users, (4) modernizing the Code's requirements, and (5) providing for multi-state cooperative purchasing.

It is very expensive for government and the participating bidders to conduct and participate in competitive public procurements. The very process of developing written solicitations with open, competitive specifications requires many hours by users and trained procurement officials. Vendors who respond

to these solicitations devote extensive sales and technical human resources to complete the bids and proposals that they submit in response to these solicitations. Therefore, in order to address objective number one, we have attempted to simplify our procurement methods and procedures.

For example, we are recommending that the General Assembly authorize the use of simplified purchasing procedures to higher dollar transactions. Referred to as small purchase procedures in SC Code Ann. Section 11-35-1550 of the Code, methods such as telephone solicitations and informal quotations are authorized currently up to \$25,000. We are recommending that the limit be increased to \$50,000.

In another example, SC Code Ann. Section 11-35-3310 allows state agencies to award indefinite delivery contracts (IDC's) for construction services, architect-engineer, and land surveying services. Through IDC's, agencies may process one procurement for the subsequent award of many smaller projects. They allow agencies, in effect, to retain firms in anticipation of future needs. Subsequently, when a need arises, the contracting agency activates an IDC contractor, architect or engineer, avoiding the delay involved in the procurement process. Currently, the Code allows the use of IDC's but constricts their use by limits on individual projects and on total expenditures. We are recommending that both constraints be relaxed significantly.

While it is important that we reduce transaction costs for state agencies and private sector suppliers by simplifying the Code's requirements, we cannot

imperil the Code's primary duty, which is to protect the public's interests in all our procurement activities. Many people misunderstand the purposes for competitive procurement statutes. State employees often complain about the bureaucracy of the procurement process. Vendors complain about the specific procedures that must be adhered to during the process. While some of these complaints are valid, they must remember that we are expending the public's money, not our own, on every transaction we process. Ultimately, public procurement statutes are written to protect the citizens of the governmental entity, not the participants in the procurement process. In our recommendations, we believe we have balanced the competing interests of all of the parties to the procurement process and protected the public interests.

For example, we are recommending amendments to the State's protest process. Many state officials consider the protest process to be an undue burden; frankly a pain in the neck. Therefore, we are recommending that the time available to bidders to file a protest be reduced from fifteen days to ten days. This change will allow agencies to proceed more swiftly through the procurement process on the ninety-five percent of all procurements that are not protested. However, to a degree, we depend on bidders to assist the State in policing its procurement process. Vendors specialize in specific markets and products. At MMO, we have procurement managers who are knowledgeable in particular markets and products. However, they know their markets and products better than we do. And, because they compete against each other every

day, they know their competitors' products better than we do. In order to balance agencies needs for a responsive procurement process with the necessary oversight of that process, we are recommending that bidders who do file protests be allowed an additional ten days to develop their protests.

A primary aim of MMO is to authorize more user involvement and authority in order to improve the Code's responsiveness to its end-users. In 1981, when the General Assembly enacted the Code, they authorized every agency to process their own procurements up to \$2,500. Further, they created the procurement certification process, whereby the Budget and Control Board may grant agencies additional procurement authority. With certification, agencies process their own procurements within their authorized limits and (hopefully) in accordance with the Code without submitting them to MMO for processing. Simply put, certification is based on the theory that every step in a process creates a drag on that process. Conversely, every step eliminated from a process shortens that process.

Since 1981, MMO has attempted to create that balance. Over the years, we have delegated tremendous procurement authority to agencies through certification. Prior to 1981, such levels of certification were unheard of. Currently, fifty state agencies are certified, many of them to levels exceeding

\$100,000. However, the baseline certification for all agencies has only been increased to \$5,000⁸.

Like all agencies of the State, MMO has been wracked by budget cuts over recent years with more anticipated. In the past two years, those cuts have caused the loss of 20% of our buying staff, which has created a tremendous strain on the remaining procurement managers and project managers to meet the needs of our users. As a result, MMO is in danger of becoming a bottleneck in the process. Therefore, we are recommending that the baseline certification for agencies be raised to \$50,000. Realizing that every agency is not prepared for such an increase in authority, we are formulating contingency plans for a concentrated training program if this recommendation is enacted.

However, certain efficiencies and cost savings are possible through the collective bargaining that only a centralized procurement office can offer the State. In the procurement process, certification is the constraint on the process that, if balanced properly, allows for the maximum efficiency and effectiveness of both agency procurement offices and MMO. We are recommending that MMO continue to function as the State's centralized procurement office in order to establish statewide procurement policies, aggregate procurement needs into large statewide term contracts, provide specially trained procurement managers to process the State's most sensitive and critical procurements, and regulate agency procurements in order to ensure compliance with the Code.

⁸ Act 178 of 1993.

Primarily because the General Assembly renovated our Code in 1997, adding best value bidding and fixed price bidding and then added electronic bidding in 2000, we believe that we have a modern, progressive code sympathetic to today's e-procurement concerns. This belief has been reinforced through my affiliation with NASPO where I communicate with my peers routinely. However, in order to consider other possibilities to modernize the Code's requirements, I have looked to several sources for information. They included the ABA's Annotations to the Model Procurement Code for State and Local Governments with Analytical Summary of State Enactments, the 2000 Model Procurement Code for State and Local Governments (an update), and NASPO's Survey of State & Local Government Purchasing Practices, 2001 Edition.

Some of these ideas have been incorporated into our recommendations. For example, we are recommending that the State's statute authorizing competitive on-line bidding (SC Code Section 11-35-1529) be amended to allow reverse on-line auctioning. A growing number of states are restructuring the bidding process to allow for reverse auctioning. In this procedure, authorized bidders are allowed to actually see the lowest bid amount through an internet connection provided by a specialized internet service provider. Once the initial bids have been submitted, bidders are allowed to continue to submit counter-offers to beat the bids from their competitors, something not allowed in conventional sealed bidding. Reverse auctioning draws from the practices

utilized in conventional auctions, but instead of driving prices up, reverse auctioning drives prices down. Chief procurement officers from states that utilize reverse auctioning contend that this “one-ups-man-ship” provides more competitive pricing for goods and services.

Through statewide term contracts, MMO marshals the state’s collective bargaining power to leverage better prices for commonly used items and services. We have succeeded in providing those items at very competitive prices, typically thirty percent below market pricing. Realizing that there is only so much leverage that a single state can marshal, more and more states are turning to multi-state cooperative purchasing to further enhance their competitive position. For example, forty states have joined together to purchase pharmaceuticals collectively through the Minnesota Multi-State Cooperative for Pharmaceuticals (MMCAP). In another example, the Western States Cooperative Alliance (WSCA) buys computer equipment collectively. Currently, every state west of the Mississippi River and a growing number of states east of the river buy computer products collectively.

In order to take advantage of the states’ combined collective bargaining power; we are recommending additional authority to allow MMO to join with other states in procurement projects of mutual interest. Our Code tempts the reader with cooperative purchasing opportunities. For example, it reads, “Any public procurement unit may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any supplies, services,

or construction with one or more public procurement units or external procurement activities in accordance with an agreement entered into between the participants.” (SC Code Section 11-35-4810.) However, the current Code imposes impediments that prevent these opportunities such as imposing in-state resident vendor preferences against bidders from the other participating states. This requirement effectively dampens other states enthusiasm for participating with South Carolina in cooperative procurements. While we realize a recommendation to eliminate the resident vendor preferences altogether would be “Dead on Arrival,” we are recommending that the preferences not apply to multi-state procurements.

South Carolina was the latest entrant to MMCAP, joining in June 2002. However, in order to do so, we had to exercise an exemption from the Code. To date, we have not been able to join the WSCA cooperative. We believe that providing for multi-state cooperative purchasing is imperative to our continuing efforts to lower prices for state users. We further believe that an exemption should not be necessary.

Objective no. 2 - To assess stakeholder content/discontent with the Code and state procurement processes.

We accomplished this objective primarily through discussions with our focus groups of agency and vendor participants. We discovered that most participants are satisfied generally with the current Code and procurement processes utilized by the State. Of all the participants, it was apparent that the

primary dissatisfied group was minority vendors. The many focus group meetings have confirmed my belief that we need to improve access to state procurement opportunities for certified minority business enterprises (MBE's). During the meetings of the goods and services vendors, the goods and services state officials, and the certified minority vendor focus groups, we heard them express the opinion that the state has not accomplished the Code's goal of assisting minority owned businesses.

The Code recognizes the historical plight of minority vendors in their attempts to gain equal access to the public well. (SC Code Ann. Section 11-35-5210.) It requires the State's chief procurement officers to "assist minority businesses with the procurement procedures." (SC Code Ann. Section 11-35-5220(1).) Further, it requires state agencies to develop minority business enterprise utilization plans annually "that include a reasonable percentage of each governmental body's total procurements directed toward minority vendors." (SC Code Ann. Section 11-35-5240.) However, minority vendors expressed to us that the current methods being used by the State are ineffective. Therefore, we are recommending amendments to: (1) attract more minority vendors to the certification program by adding more incentives for them, (2) expand a tax credit provision to contractors who subcontract with certified minority businesses, (3) allow the same tax credit for the minority vendors, (4) allow the chief procurement officers greater flexibility to negotiate with certified minority firms, and (5) strengthen the agency planning process.

Specifically, we are recommending consideration of MBE status in awarding tie bids and architect-engineer contracts. Also, we are seeking authorization to waive certain fees for certified minority vendors, such as subscriptions to *South Carolina Business Opportunities*, MMO's semi-weekly newsletter of procurement opportunities. Further, we are seeking to increase and expand a 4% tax credit available to majority contractors who subcontract with certified minorities. Hopefully, this will entice contractors to use MBE's as subcontractors.

Objective no. 3 - To submit the new Code to the General Assembly for its 2003 session and advocate passage

We are on track to draft the proposed Code changes, seek legislative sponsorship, and file a bill for the 2003 session. Attachment 2 contains our recommendations prepared in Bill form. We have cleared those recommendations with our focus and advisory groups, the MMO staff, and the Budget and Control Board's Executive Director's Office.

Prospectus

The legwork is done. Now the hard part begins. At this point, it is my task to advocate our proposals and convince prospective sponsors and then a majority of the General Assembly to support our recommendations. Currently, we are seeking a legislative sponsor for the proposed bill. Since the Budget and

Control Board includes the Chairman of the House Ways and Means Committee and the Senate Finance Committee, we are seeking their sponsorship first. On January 10, 2003, we met with Robbie Dawkins and Michael Shealy of the Senate Finance Committee staff. We are currently awaiting a meeting with Senator Hugh Leatherman, Chairman, who is not only one of our Board members, he has sponsored most of the procurement legislation enacted in South Carolina since the original Code was passed in 1981. It is impossible to predict whether the General Assembly will embrace our recommendations or not, but we have approached the project in an open fashion that allowed for full participation and input from our customers and stakeholders. Hopefully, our recommendations will serve the interests of our ultimate customers, the citizens of our great state.

HIGHLIGHTS OF PROPOSED CHANGES TO THE CONSOLIDATED PROCUREMENT CODE

Technical Changes

A great many of the suggested changes are technical changes. In the opinion of the Board's staff, these changes make no substantive change to current practice. They are intended to eliminate unintended ambiguities or potential problems. Most of the technical changes fall into three categories: (1) First, the phrase "information technology" is added throughout the code to address a long-standing oversight. (2) Second, selected changes are made to eliminate any argument that the procurement code applies to transactions involving solely real property. (3) Third, numerous technical changes are made in order to (a) address restructuring of the Board, specifically the removal of procurement from General Services, and (b) to eliminate any future need to change the procurement code to reflect future modifications to the Board's internal structure.

Product Cost Reduction

1. Subcontractor Listing (11-35-3020)
 - Allow pre-award substitution of subcontractors to prevent rejection of otherwise responsive general contractors' bids
2. Cooperative Purchasing (11-35-4810)
 - Free cooperative purchasing from other requirements of code as long as the procuring entity follows a process certified by the CPO to be generally equivalent to the SC State Code.
 - Allow cooperative purchasing with non-profit entities composed of public procurement units, e.g. NASPO, NIGP, WSCA, etc.
 - Allow state employees and non-profit educational institutions to participate in state contracts. This would be strictly voluntary for vendors bidding on state contracts. It would not effect award of the contracts. No liability would accrue to the State for employee purchases.
 - Allow the CPO's to enter into multi-state cooperative procurements determined to be advantageous to the State. The Code would still require a 30-day notice of our intent and require distribution to SC agencies through business authorized to do business in SC.
 - If allowed by Congress, allow the State to access GSA contracts.

Administrative Cost Reduction

1. School Districts (11-35-70)
 - Reduce number of covered school districts by increasing the threshold at which districts come under this requirement by adjusting the threshold for inflation: \$75 million in 1984 is \$135 million today
 - Originally section covered 2 districts, now we have 22. If enacted, 7 would remain covered.
 - Get Board out of business of approving school district codes as substantially similar. With assistance by the Board, DOE would develop one "model" code instead.
2. Purchases for Directors and Assistant Directors (11-35-450)
 - Adjust threshold from \$500 to \$1,000.
 - Item requested by State agencies in order to eliminate an administrative burden.
3. Request for Qualifications - IFB's (11-35-1520 (11).)
 - Eliminate OGS approval requirement (except for construction)
4. Resident Vendor Preference (11-35-1524)
 - In order to qualify for the preference, add requirements of:

- Registration with Department of Revenue
 - One year residency requirement
 - Eliminate preferences from best value bids same as currently exempted from RFP's
 - Eliminate preferences from cooperative purchases with other states
5. Preference for Competitive Sealed Bidding (11-35-1525, 1528, 1530, & 3020)
- Eliminate preference for bidding and the requirement for written determinations before using other methods authorized by the Code
 - This change applies to construction too
6. Agency Base Certification (11-35-1550(1).)
- Raise agency baseline certification from \$5,000 to \$50,000
 - In 1993, the State Procurement Office had 19 FTE's, in 2003 SPO has 10 FTE's.
7. Small Purchase Limits - overhaul (11-35-1550)
- Raise small purchase limit & protest level to \$50,000
 - Increase \$1,500 to \$2,500 for certifying prices as reasonable
 - Eliminate verbal quotes
 - \$2,500 up to \$10,000 - 3 written quotes
 - \$10,001 up to \$50,000 - SCBO advertisement for written quotes
8. Construction Prequalification (11-35-1825)
- Allow prequalification of subcontractors
9. Contracting Documents (11-35-2010)
- Eliminate statutory requirement to promulgate contract documents as regulations
 - Allow CPO's to adopt documents for internal use
 - Allow BCB to adopt mandatory contract documents
10. A/E Selection (11-35-3220)
- Add selection criteria for knowledge of locality of project, related experience on similar projects, volume of work awarded to MBEs and firms not otherwise receiving state work
 - Eliminate OSE approval of small A/E contracts under \$25,000 (11-35-3230)
11. Construction Indefinite Delivery Contracts (11-35-3310)
- Raise value limit from \$750,000 for 2 years to \$3,750,000 for five years.
 - Raise individual project expenditure limit from \$150,000 to \$300,000.
12. A/E Indefinite Delivery Contracts (11-35-3310)
- Raise value limit from \$300,000 for 2 years to \$1,250,000 for five years.
 - Leave \$100,000 unchanged
13. Protest Period (11-35-4210)
- Prohibit protests under \$50,000
 - Shorten protest period on awards from 15 to 10 days. Shorten the 16 intent to award period to 11 days. Absent a protest (95% of all awards), this shortens the wait before each award becomes final by 5 days. If a protest is received, allow another 10 days from filing for the protestant to develop his protest. Note: The protest period of 15 days for a solicitation would remain the same.
 - Require notice of award to be sent to all bidders for all awards of \$50,000 or more.
 - Increase the intent to award threshold from \$50,000 to \$100,000 to gain 16 days on all awards from \$50,000 to \$100,000.
 - Require notice of the CPO's address to be included in every solicitation and award.

Public Policy

Small and Minority Business Enterprises (11-35-5210)

- Add new incentives for certified MBE's, such as:
 - Allowing consideration of certified MBE in tie bids
 - Allowing consideration of certified MBE in A/E selections
 - Allowing the CPO's to waive certain user or subscription fees for MBE's
- Add new incentives for contractors to subcontract with MBE's, such as:
 - Increase the cap on the tax credit from \$25,000 to \$50,000
 - Eliminate the five-year limit on applying for this credit
 - Extend eligibility for the tax credit to the minority subcontractor
- Allow more flexibility to enter contracts with MBE's by eliminating the phrase "and results in no loss to the State" from 11-35-5230(A)(5)
- Address the State agency goal setting process, such as:
 - Establish better means of tracking how much of an agency's discretionary money is directed to MBEs.
 - Set a 10% goal of controllable dollars for every agency
 - Allow agency heads to be held responsible for the success or failure of the program in their agency

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff

Discussion Draft For Meeting of 01/10/03

PARTIAL SUMMARY OF RECURING TECHNICAL CHANGES

A great many of the suggested changes are technical changes. In the opinion of the Board's staff, these changes make no substantive change to current practice. They are intended to eliminate unintended ambiguities or potential problems. Most of the technical changes fall into three categories: (1) First, the phrase "information technology" is added throughout the code to address a long standing oversight. (2) Second, selected changes are made to eliminate any argument that the procurement code applies to transactions involving solely real property. (3) Third, numerous technical changes are made in order to (a) address restructuring of the Board, specifically the removal of procurement from General Services, and (b) to eliminate any future need to change the procurement code to reflect future modifications to the Board's internal structure.

SECTION 11-35-25. Relation to Other Laws.	This provision is modeled after a uniform provision found in both the first and second Model Procurement Codes. This provision is much needed, for example, to make clear that the Code takes priority over the UCC to the extent of any conflicts. A provision almost identical to the Model Code provision is part of the Uniform Commercial Code and is widely adopted. See <u>Flavor-Inn, Inc. v. NCNB National Bank of South Carolina</u> , 424 S.E.2d 534 (Ct. App. 1992) (discussing § 36-1-103), <u>Equitable Life Assurance Society v. Okey</u> , 812 F.2d 906 (4th Cir. 1987) (discussing UCC § 1-103), and <u>ISC Distributors, Inc. v. Trevor</u> , 903 P.2d 170 (Mont. 1995) (applying the Model Code provision).
<u>This code supersedes all laws or parts of laws in conflict therewith to the extent of the conflict, including, but not limited to, the principles of law and equity and the Uniform Commercial Code of this State.</u>	
SECTION 11-35-40. Application of this Code.	
(1) General Application. This code applies only to contracts solicited or entered into after the effective date of this code unless the parties agree to its application to a contract entered into prior to its effective date.	
(2) Application to State Procurement. This code shall apply to every <u>procurement or expenditure of funds by this State under contract acting through a governmental body as herein defined irrespective of the source of the funds, including federal assistance monies, except as specified in Section 11-35-40(3) (Compliance with Federal Requirements) and except as provided in Article 19 (Intergovernmental Relations). It shall also apply to the disposal of state supplies as provided in Article 15 (Supply Management). This code shall not apply either to gifts or to the issuance of grants. The provisions of this code shall apply to all procurements of information technology elements by any governmental body, irrespective of the source funds whether appropriated or not.</u>	<p>1. TECHNICAL CHANGE: In <u>Protest of Wometco</u>, Case No. 1991-14, the Procurement Review Panel effectively ruled that revenue generating contracts - or a great many of them - would be covered by the Code. The first change codifies this ruling and a long standing practice.</p> <p>2. TECHNICAL CHANGE: Change (additional sentence) clarifies that code does not apply to gifts or grants.</p> <p>3. TECHNICAL CHANGE: With the addition of the phrase "information technology" to the definition of procurement, the last sentence is unnecessary.</p>

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

<p>(3) Compliance with Federal Requirements. Where a procurement involves the expenditure of federal assistance or contract funds, the governmental body shall also comply with such federal law and authorized regulations as are mandatorily applicable and which are not presently reflected in the code. Notwithstanding, where federal assistance or contract funds are used in a procurement by a governmental body as defined in Section 11-35-310(18), requirements that are more restrictive than federal requirements shall be followed.</p>	
<p>(4) The acquisition of any facility or capital improvement by a foundation or eleemosynary organization on behalf of or for the use of any state agency or institution of higher learning which involves the use of public funds in the acquisition, financing, construction, or current or subsequent leasing of the facility or capital improvement is subject to the provisions of this code in the same manner as any governmental body. The definition and application of the terms "acquisition", "financing", "construction", and "leasing" are governed by standards and principles established by the State Auditor.</p>	
<p>SECTION 11-35-45. Payment for goods and services received by state.</p>	
<p>(A) All vouchers for payment of purchases of <u>supplies, goods or services, or information technology</u> shall be delivered to the Comptroller General's office within thirty work days from acceptance of the goods or services and proper invoice. After the thirtieth work day, following acceptance or the postmark on the invoice, the Comptroller General shall levy an amount not to exceed fifteen percent per annum from the funds available to the agency, such amount to be applied to the unpaid balance to be remitted to the vendor unless the vendor waives imposition of the interest penalty.</p>	<p>TECHNICAL CHANGE: Change made to make sure code consistently applies uniformly to IT transactions.</p> <p>TECHNICAL CHANGE: Change made to uniformly reference all applicable defined terms (supplies, services, information technology, or construction) rather than undefined terms (goods or equipment).</p>
<p>(B) All agencies and institutions of the State are required to comply with the provisions of this section. Only the lump sum institutions of higher education are responsible for the payment of all goods or services within thirty work days after the acceptance of the goods or services and proper invoice, whichever is received later, and shall pay an amount not to exceed fifteen percent per annum on any unpaid balance which exceeds the thirty work-day period, if the vendor specifies on the statement or the invoice submitted to such institutions that a late penalty is applicable if not paid within thirty work days after the acceptance of goods or services.</p>	
<p>(C) The Comptroller General shall issue written instructions to the agencies to carry out the intent of this section. All offices, institutions, and agencies of state government shall fully cooperate with the Comptroller General in the implementation of this section.</p>	
<p>(D) The thirty-day period shall not begin until the agency, whether or not the agency processes vouchers through the Comptroller General, certifies its satisfaction with the received goods or services and proper invoice.</p>	
<p>SECTION 11-35-70. School district subject to consolidated procurement code; exemptions.</p>	
	<p>The application of Section 11-35-70 to school districts was implemented in 1984. Since 1984, any school district with a budget of expenditures greater than seventy-five million dollars was subject to the provisions of Section 11-35-70. The base amount of seventy-five million dollars has not been adjusted to account for inflation thus resulting in the total number of school districts subject to Section 11-35-70 to increased from four to twenty-two as of June 30, 2001. By indexing the fixed dollar amount in fiscal year 1984 to fiscal year 2002 dollars, the base amount of seventy-five million dollars would equate to one hundred thirty-five million dollars as of June 30, 2003. With the proposed changes to Section 11-35-70 seven school districts</p>

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

~~Irrespective of the source of funds, any school district whose budget of total expenditures, including debt service, exceeds seventy five million dollars annually is subject to the provisions of Chapter 35 of Title 11, and shall notify the Director of the Office of General Services of the Budget and Control Board of its expenditures within ninety days after the close of its fiscal year. However, if a district has its own procurement code which is, in the written opinion of the Office of General Services of the State Budget and Control Board, substantially similar to the provisions of the South Carolina Consolidated Procurement Code, the district is exempt from the provisions of the South Carolina Consolidated Procurement Code except for a procurement audit which must be performed every three years by an audit firm approved by the Office of General Services. Costs associated with the internal review and audits are the responsibility of the school district and will be paid to the entity performing the audit.~~

(a) The State Department of Education shall promulgate a South Carolina Model School District Procurement Code and instructions regarding how each Covered District may customize the model code to its needs. In developing the model code, and any subsequent modifications to the model code, the State Department of Education shall consult with all Covered Districts and the Budget and Control Board. The State Department of Education shall submit the model code to the General Assembly for legislative review in accordance with the Administrative Procedures Act no later than one year from the enactment of this provision. The State Department of Education may modify the model code in accordance with the Administrative Procedures Act at any time.

(b) No later than one year after the General Assembly approves a version of the South Carolina Model School District Procurement Code, all Covered Districts shall adopt that version in accordance with the accompanying instructions and shall operate in compliance with the version adopted. Any school district, other than a Covered District, may adopt the South Carolina Model School District Procurement Code.

(c) A school district becomes a Covered District after it first adopts a budget in excess of one hundred fifty million dollars. The State Department of Education may change this amount and establish the method of determining this amount by regulation. Within thirty days of becoming a Covered District, a school district shall provide to the State Department of Education notice of its status as a Covered District.

(d) Covered Districts shall be audited at least every three years for compliance with the procurement code adopted by the school district. Such audits shall be conducted by either the Designated Board Office or by an audit firm approved by the Covered District's governing board. The results of an audit shall be reported in a management letter to the board of the audited Covered District. The management letter shall address any noncompliance with the Covered District's procurement code, the adequacy of the Covered District's internal controls for ensuring compliance with its code, and any proposed corrective action. Costs associated with audits are the responsibility of the Covered District and shall be paid to the entity performing the audit.

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

<p>(e) If a Covered District has its own procurement code which has been previously determined by the Designated Board Office as substantially similar to the provisions of the South Carolina Consolidated Procurement Code, the Covered District shall continue to operate in accordance with a code which is, in the written opinion of the Designated Board Office, substantially similar to the provisions of the South Carolina Consolidated Procurement Code, until the Covered District is required to adopt the South Carolina Model School District Procurement Code in accordance with this section. The Designated Board Office's written opinion shall be final and conclusive unless clearly erroneous, arbitrary, capricious, or contrary to law. Notwithstanding subparagraph (d) above, any Covered District which is or has operated pursuant to this subparagraph (e) shall be audited in accordance with an audit schedule approved by the Designated Board Office, but in no case less than every three years. For purposes of this subsection (e), the Procurement Review Panel shall have exclusive jurisdiction pursuant to Section 11-35-4410(1)(b) to resolve any claim that a Covered District's procurement code, as approved by the Designated Board Office, is not substantially similar to the South Carolina Consolidated Procurement Code.</p>	
<p>SECTION 11-35-210. Determinations.</p>	
<p>Written determinations and findings expressly required by the code or regulation shall be retained in an official contract file of the governmental body administering the contract. Such determinations shall be documented in sufficient detail to satisfy the requirements of audit as provided for in Section 11-35-1230.</p>	
<p>SECTION 11-35-310. Definitions.</p>	
<p>Unless the context clearly indicates otherwise:</p>	
<p>(1) "Information Technology (IT)" means data processing, telecommunications, and office systems technologies and services:</p>	
<p>(a) "data processing" means the automated collection, storage, manipulation, and retrieval of data including: central processing units for micro, mini, and mainframe computers; related peripheral equipment such as terminals, document scanners, word processors, intelligent copiers, off-line memory storage, printing systems, and data transmission equipment; and related software such as operating systems, library and maintenance routines, and applications programs.</p>	
<p>(b) "telecommunications" means voice, data, message, and video transmissions, and includes the transmission and switching facilities of public telecommunications systems, as well as operating and network software.</p>	
<p>(c) "office systems technology" means office equipment such as typewriters, duplicating and photocopy machines, paper forms, and records; microfilm and microfiche equipment and printing equipment and services.</p>	
<p>(d) "services" means the providing of consultant assistance for any aspect of information technology, systems, and networks.</p>	
<p>(2) "Board" means State Budget and Control Board.</p>	
<p>(3) "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity.</p>	
<p>(4) "Change order" means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual agreement of the parties to the contract.</p>	
<p>(5) "Chief procurement officer" means (a) the management officer for</p>	

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

information technology, (b) the state engineer for areas of construction, architectural and engineering, construction management, and land surveying services, and (c) the materials management officer for all other procurements.	
(6) "Information Technology Management Officer" means the person holding the position as the head of the Information Technology Office of the State.	
(7) "Construction" means the process of building, altering, repairing, remodeling, improving, or demolishing any public structure or building or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair or routine maintenance of existing structures, buildings, or real property.	
(8) "Contract" means all types of state agreements, regardless of what they may be called, for the procurement or disposal of supplies, services, information technology, or construction.	TECHNICAL CHANGE: Change made to make sure code consistently applies uniformly to IT transactions.
(9) "Contract modification" means a written order signed by the procurement officer, directing the contractor to make changes which the changes clause of the contract authorizes the procurement officer to order without the consent of the contractor.	
(10) "Contractor" means any person having a contract with a governmental body.	
(11) "Cost effectiveness" means the ability of a particular product or service to efficiently provide goods or services to the State. In determining the cost effectiveness of a particular product or service, the appropriate chief procurement officer shall list the relevant factors in the bid notice or solicitation and use only those listed relevant factors in determining the award.	
(12) "Data" means recorded information, regardless of form or characteristics.	
(13) "Days" means calendar days. In computing any period of time prescribed by this code or the ensuing regulations, or by any order of the Procurement Review Panel, the day of the event from which the designated period of time begins to run is not included. If the final day of the designated period falls on a Saturday, Sunday, or a legal holiday for the state or federal government, then the period shall run to the end of the next business day.	
(14) "Debarment" means the disqualification of a person to receive invitations for bids, or requests for proposals, or the award of a contract by the State, for a specified period of time commensurate with the seriousness of the offense or the failure or inadequacy of performance.	
(15) "Designee" means a duly authorized representative of a person with formal responsibilities under the code.	
(16) "Employee" means an individual drawing a salary from a governmental body, whether elected or not, and any nonsalaried individual performing personal services for any governmental body.	
(17) [omitted] "General Services" means the Office of the Budget and Control Board.	TECHNICAL CHANGE: Change made to reflect Board restructuring.
(18) "Governmental Body" means a state government department, commission, council, board, bureau, committee, institution, college, university, technical school, agency, government corporation, or other establishment or official of the executive or judicial branch. Governmental body excludes the General Assembly or its respective branches or its committees, Legislative Council, the Office of Legislative Printing, Information and Technology Systems, and all local political subdivisions such as counties, municipalities, school districts, or public service or special purpose districts or any entity created by act of the General Assembly for the purpose of erecting monuments or memorials or commissioning art that is being procured exclusively by private funds.	

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

(19) "Grant" means the furnishing by the State or the United States government of assistance, whether financial or otherwise, to any person to support a program authorized by law. It does not include an award, the primary purpose of which is to procure specified end products, whether in the form of supplies, services, <u>information technology</u> , or construction. A contract resulting from such an award shall not be deemed a grant but a procurement contract.	TECHNICAL CHANGE: Change made to make sure code consistently applies uniformly to IT transactions.
(20) "Invitation for Bids" means a written or published solicitation issued by an authorized procurement officer for bids to contract for the procurement or disposal of stated supplies, services, <u>information technology</u> or construction, which will ordinarily result in the award of the contract to the responsible bidder making the lowest responsive bid.	TECHNICAL CHANGE: Change made to make sure code consistently applies uniformly to IT transactions.
(21) "Materials Management Officer" means the person holding the position as the head of the materials management office of the State.	
(22) "Office" means a nonmobile place for the regular transaction of business or performance of a particular service and staffed by at least one employee on a routine basis.	
(23) "Political subdivision" means all counties, municipalities, school districts, public service or special purpose districts.	
(24) "Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services, <u>information technology</u> , or construction. It also includes all functions that pertain to the obtaining of any supply, service or construction, including description of requirements, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration.	TECHNICAL CHANGE: Change made to make sure code consistently applies uniformly to IT transactions.
(25) "Procurement officer" means any person duly authorized by the governmental body, in accordance with procedures prescribed by regulation, to enter into and administer contracts and make written determinations and findings with respect thereto. The term also includes an authorized representative of the governmental body within the scope of his authority.	
(26) "Purchasing agency" means any governmental body other than the chief procurement officers authorized by this code or by way of delegation from the chief procurement officers to enter into contracts.	
(27) "Real property" means any land, all things growing on or attached thereto, and all improvements made thereto including buildings and structures located thereon.	
(28) "Request for Proposals (RFP)" means a written or published solicitation issued by an authorized procurement officer for proposals to provide supplies or services , <u>information technology</u> , or construction which ordinarily result in the award of the contract to the responsible bidder making the proposal determined to be most advantageous to the State. The award of the contract must be made on the basis of evaluation factors which must be stated in the RFP.	TECHNICAL CHANGE: Change made to make sure code consistently applies uniformly to IT transactions. TECHNICAL CHANGE: Change made to uniformly reference all applicable defined terms (supplies, services, information technology, or construction) rather than undefined terms (goods or equipment).
(29) "Services" means the furnishing of labor, time, or effort by a contractor not required to deliver a specific end product, other than reports which are merely incidental to required performance. This term includes consultant services other than architectural, engineering, land surveying, construction management, and related services. This term does not include employment agreements or services as defined in Section 11-35-310(1)(d).	
(30) "Subcontractor" means any person having a contract to perform work or render service to a prime contractor as a part of the prime contractor's agreement with a governmental body.	
(31) "Supplies" means all personal property including, but not limited to,	

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

equipment, materials, printing, and insurance.	
(32) "State" means state government.	
(33) "State Engineer" means the person holding the position as head of the state engineer's office.	
(34) "Suspension" means the disqualification of a person to receive invitations for bids, requests for proposals, or the award of a contract by the State, for a temporary period pending the completion of an investigation and any legal proceedings that may ensue because a person is suspected upon probable cause of engaging in criminal, fraudulent, or seriously improper conduct or failure or inadequacy of performance which may lead to debarment.	
(35) "Term Contract" means a contract established by the chief procurement officer for a specific product or service supplies, services, or information technology for a specified time and for which it is mandatory that all governmental bodies procure their requirements for the goods and services during its term. If a governmental body <u>As provided in the solicitation, if a public procurement unit is offered goods and services the same supplies, services, or information technology at a price that is at least ten percent less than the term contract price for the same goods or services, it may purchase from the vendor offering the lower price after first offering the vendor holding the term contract the option to meet the lower price. The solicitation used to establish the term contract shall specify any contract terms applicable to a purchase from the vendor offering the lower price. If the vendor holding the term contract meets the lower price, then the governmental body must purchase from the contract vendor. All decisions to purchase from the vendor offering the lower price shall be documented by the procurement officer in sufficient detail to satisfy the requirements of an external audit. A term contract may be a multi-term contract as provided in Section 11-35-2030.</u>	<p>TECHNICAL CHANGE: Change made to uniformly reference all applicable defined terms (supplies, services, information technology, or construction) rather than undefined terms (goods or equipment).</p> <p>The second change is made to protect the integrity of term contracts by disallowing the substitution of goods or services of lesser quality.</p> <p>The third change is made to bring some level of accountability to the use of the Term Contract 10% Provision - for which there is currently no reporting, auditing, or other accountability.</p>
(36) "Using agency" means any governmental body of the State which utilizes any supplies, services, <u>information technology</u> , or construction purchased under this code.	TECHNICAL CHANGE: Change made to make sure code consistently applies uniformly to IT transactions.
(37) "Designated Board Office" and "Designated Board Officer" means the office or officer designated in accordance with Section 11-35-540(5).	TECHNICAL CHANGE: Change made to reflect Board restructuring.
SECTION 11-35-410. Public access to procurement information.	
(a) Procurement information shall be a public record to the extent required by Chapter 4 of Title 30 (The Freedom of Information Act) with the exception that commercial or financial information obtained in response to a "Request for Proposals" or any type of bid solicitation which is privileged and confidential need not be disclosed.	
(b) Privileged and confidential information is information in specific detail not customarily released to the general public, the release of which might cause harm to the competitive position of the party supplying the information. Examples of this type of information would include:	
(1) customer lists;	
(2) design recommendations and identification of prospective problem areas under an RFP;	
(3) design concepts, including methods and procedures;	
(4) biographical data on key employees of the bidder;	
(c) For all documents submitted in response or with regard to any solicitation or other request, such documents need not be disclosed if no award is made.	

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

(d) Evaluative documents predecisional in nature such as inter- or intra-agency memoranda containing technical evaluations and recommendations are exempted so long as the contract award does not expressly adopt or incorporate the inter- or intra-agency memoranda reflecting the predecisional deliberations.	
(e) At the time of submitting a proposal or bid, the party supplying a bid or proposal must identify any portions of the proposal or bid considered by the party to be a trade secret and thus eligible to be withheld from public inspection and copying. If the information identified by the party is a trade secret, as defined in Section 30-4-40(a)(1), it may be withheld from public inspection and copying. If the party fails to identify information as a trade secret, the entire bid or proposal is to be made available for public inspection and copying. For all documents submitted in response or with regard to any solicitation or other request, the person submitting the documents must comply with any instructions provided in the solicitation for marking information exempt from public disclosure. Any information not marked as required by the applicable instructions may be disclosed to the public. Nothing in this subparagraph (e) exempts documents from disclosure in accordance with Title 30, Chapter 4.	
SECTION 11-35-450. Reporting purchases.	Change requested by agencies.
(A) The purchase of furniture, floor coverings, wall coverings, or any other decorative or ornamental item by a governmental body for at least one of the following uses must be reported to the governing board, commission, or council of the respective governmental body, when the cost of the furniture, covering, or item exceeds <u>one thousand five hundred dollars</u> , before the purchase:	
(1) in an office or adjoining reception area utilized by an agency director or assistant agency director;	
(2) in a board room or a conference room used as a board room.	
(B) The reports required in subsection (A) must include the item to be purchased and its price. Upon receiving the reports, the governing board, commission, or council of the respective governmental body formally shall approve or disapprove the purchase.	
SUBARTICLE 11.	The Board is separately pursuing amendment of a statute in Title 1 that addresses this identical issue. Accordingly, this provision should be deleted to avoid inconsistencies.
ACCEPTANCE OF GIFTS IN KIND AND CERTAIN SERVICES	
SECTION 11-35-475. Governmental body may accept certain gifts in kind; restrictions.	
Governmental bodies may accept gifts in kind of architectural or engineering services, or both, and items of construction of value less than two hundred fifty thousand dollars with the approval of the staff of the Commission on Higher Education, the Director of the Office of General Services, and designated staff of the Joint Bond Review Committee, provided that these gifts may not be made or accepted if these gifts are offered with intent of influencing the judgment of any governmental body. No other approvals or procedural requirements, including the provisions of Chapter 35, Title 11, may be imposed on the acceptance of these gifts.	
SECTION 11-35-510. Centralization of materials management authority.	TECHNICAL CHANGE: Change made to reflect Board restructuring. Reference to 11-35-1270 deleted because the statute has been deleted.

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

<p>All rights, powers, duties and authority relating to the procurement of supplies, services, and information technology and to the management, control, warehousing, sale and disposal of supplies, construction, information technology, and services now vested in or exercised by any state governmental body under the provisions of law relating thereto, and regardless of source of funding, are hereby vested in the Office of General Services <u>appropriate Chief Procurement Officer</u>. This vesting of authority shall be subject to Sections 11-35-710 (Exemptions), 11-35-1250 (Authority to Contract for Auditing Services), 11-35-1260 (Authority to Contract for Legal Services), 11-35-1270 (Authority to Contract for Certain Services), Section 11-35-1550 (Small Purchases), Section 11-35-1570 (Emergency Procurements), 11-35-3230 (Exception for Small Architect-Engineer, and Land Surveying Services Contracts), and Section 11-35-3620 (Management of Warehouses and Inventory).</p>	
<p>SECTION 11-35-540. Authority and duties of the Board.</p>	
<p>(1) Authority to Promulgate Regulations. Except as otherwise provided in this code, the board shall have the authority and responsibility to <u>may</u> promulgate regulations, consistent with this code, governing the procurement, management, control, and disposal of any and all supplies, services, <u>information technology, and construction to be procured by the State</u>. Such regulations shall be binding in all procurements made by the State.</p>	<p>TECHNICAL CHANGE: Change made to make sure code consistently applies uniformly to IT transactions.</p>
<p>(2) Nondelegation. The board shall not delegate its power to promulgate regulations.</p>	
<p>(3) Approval of Operational Procedures. Governmental bodies shall be authorized to develop internal operational procedures consistent with this code; provided, that such operational procedures shall be approved <u>certified</u> in writing by the appropriate chief procurement officer as being consistent with this chapter. <u>Such operational procedures shall be consistent with this chapter. Operational procedures adopted pursuant to this Chapter are exempt from the requirements of § 1-23-140.</u></p>	
<p>(4) The board as a whole or acting through its procurement policy committee shall consider and decide matters of policy within the provisions of this code including those referred to it by the chief procurement officers. The board shall have the power to audit and monitor the implementation of its regulations and the requirements of this code.</p>	<p>TECHNICAL CHANGE: Change made to reflect that procurement policy committee no longer exists.</p>
<p>(5) For every reference in this code to a Designated Board Office, the chief executive officer of the board shall designate the office or other subdivision of the board that is responsible for the referenced statutory role. For every reference in this code to a Designated Board Officer, the chief executive officer of the board shall designate the board officer or other board position that is responsible for the referenced statutory role. More than one office or officer may be designated for any referenced statutory role. All designations pursuant to this subparagraph must be submitted in writing to the chief procurement officers.</p>	<p>TECHNICAL CHANGE: Change made to reflect Board restructuring.</p>
<p>SECTION 11-35-710. Exemptions.</p>	
<p>The board, upon the recommendation of the <u>Designated Board Office of General Services</u>, may exempt governmental bodies from purchasing certain items through the respective chief procurement officer's area of responsibility. The board may exempt specific supplies, or services, information technology, or construction from the purchasing procedures</p>	<p>TECHNICAL CHANGE: Change made to reflect Board restructuring. TECHNICAL CHANGE: Change made to make sure code consistently applies uniformly to IT transactions.</p>

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

required in this section and for just cause by unanimous written decision limit or may withdraw exemptions provided for in this section. The following exemptions are granted from this chapter:	TECHNICAL CHANGE: Change made to uniformly reference all applicable defined terms (supplies, services, information technology, or construction) rather than undefined terms (goods or equipment).
(1) the construction, maintenance, and repair of bridges, highways and roads; vehicle and road equipment maintenance and repair; and any other emergency type parts or equipment utilized by the Department of Transportation or the Department of Public Safety;	
(2) the purchase of raw materials by the South Carolina Department of Corrections, Division of Prison Industries;	
(3) S.C. State Ports Authority;	
(4) Division of Public Railways of the Department of Commerce;	
(5) S.C. Public Service Authority;	
(6) expenditure of funds at state institutions of higher learning derived wholly from athletic or other student contests, from the activities of student organizations and from the operation of canteens and bookstores, except as the funds are used for the procurement of construction, architect-engineer, construction-management and land surveying services;	
(7) livestock, feed, and veterinary supplies;	
(8) articles for commercial sale by all governmental bodies;	
(9) fresh fruits, vegetables, meats, fish, milk, and eggs;	
(10) South Carolina Arts Commission and South Carolina Museum Commission for the purchase of one-of-a-kind items such as paintings, antiques, sculpture and similar objects. Before any governmental body procures the objects, the head of the purchasing agency shall prepare a written determination specifying the need for the objects and the benefits to the State. The South Carolina Arts Commission shall review the determination and forward a recommendation to the board for approval;	
(11) published books, periodicals, and technical pamphlets;	
(12) South Carolina Research Authority;	
(13) the purchase of goods, products, and services by state offices, departments, institutions, agencies, boards, and commissions or the political subdivisions of this State from the South Carolina Department of Corrections, Division of Prison Industries.	
(14) Medical University Hospital Authority, provided the Medical University Hospital Authority has promulgated a procurement process in accordance with its enabling provision.	
SECTION 11-35-810. Creation of Materials Management Office.	TECHNICAL CHANGE: Change made to reflect Board restructuring.
There is hereby created, within the board Office of General Services, a Materials Management Office to be headed by the Materials Management Officer.	
SECTION 11-35-820. Creation of Information Technology Management Office.	TECHNICAL CHANGE: Change made to reflect Board restructuring.

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

<p>There is hereby created within the board<u>Office of General Services</u>, the Information Technology Management Office to be headed by the Information Technology Management Officer. All procurements involving information technology, and any pre- and post-procurement activities in this area, shall be conducted in accordance with the regulations promulgated by the board except as otherwise provided for in this code by specific reference to the Information Technology Management Office.</p>	
<p>SECTION 11-35-830. Creation of the office of the state engineer.</p>	<p>TECHNICAL CHANGE: Change made to reflect Board restructuring.</p>
<p>There is hereby created within the board<u>Office of General Services</u>, the state engineer's office to be headed by the State Engineer. All procurements involving construction, architectural and engineering, construction management, and land surveying services, as defined in Section 11-35-2910, and any pre- and post-procurement activities in this area, shall be conducted in accordance with the "Manual for Planning and Execution of State Permanent Improvements" and with any regulations promulgated by the board, unless except as otherwise provided for in this code by specific reference to the state engineer's office.</p>	
<p>SECTION 11-35-845. Overseeing of constructionpermanent improvement projects.</p>	<p>TECHNICAL CHANGE: Procurement code is tied to the definition of construction; use of the phrase "permanent improvement" was an error.</p>
<p>Each agency of state government that has total management capability as defined and certified by the Office of General Servicesstate engineer's office shall be allowed to oversee the administration of <u>construction permanent improvement</u> projects with the state engineer's office serving as an audit function. The state engineer's office shall assist those small agencies who do not have the necessary expertise in permanent improvements.</p>	
<p>SECTION 11-35-1030. Procurement training and certification.</p>	<p>TECHNICAL CHANGE: Change made to reflect Board restructuring.</p>
<p>The chief procurement officersOffice of General Services shall develop a system of training for procurement in accordance with regulations by the board. Such training shall encompass the latest techniques and methods of public procurement. If deemed appropriate by the <u>chief procurement officers</u>Office of General Services, such training shall include a requirement for the certification of the procurement officer of each purchasing agency.</p>	
<p>SECTION 11-35-1210. Certification.</p>	<p>TECHNICAL CHANGE: Change made to reflect Board restructuring.</p>
<p>(1) Authority. The board may assign differential dollar limits below which individual governmental bodies may make direct procurements not under term contracts. The Office of General Services<u>Designated Board Office</u> shall review the respective governmental body's internal procurement operation, shall certify in writing that it is consistent with the provisions of this code and the ensuing regulations, and recommend to the board those dollar limits for the respective governmental body's procurement not under term contract.</p>	
<p>(2) Policy. Authorizations granted by the board to a governmental body are subject to the following:</p>	
<p>(a) adherence to the provisions of this code and the ensuing regulations, particularly concerning competitive procurement methods;</p>	
<p>(b) responsiveness to user needs;</p>	
<p>(c) obtaining of the best prices for value received.</p>	

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

(3) Adherence to Provisions of the Code. All procurements shall be subject to all the appropriate provisions of this code, especially regarding competitive procurement methods and nonrestrictive specifications.	
SECTION 11-35-1220. Collection of data concerning public procurement.	
<p>The Office of General Serviceschief procurement officersDesignated Board Office shall be authorized to prepare statistical data concerning the procurement, use, and disposition of all supplies, services, <u>information technology</u>, and construction. All using agencies shall furnish such reports as the Office of General Serviceschief procurement officersDesignated Board Office may require concerning use, needs, and stocks on hand, and the chief procurement officers shall prescribe forms to be used by the using agencies in requisitioning, ordering, and reporting supplies, services, <u>information technology</u>, and construction. The chief procurement officers shall limit requests for information to those items necessary for the effective operation of the purchasing system, but using agencies shall be required to provide information as requested.</p>	<p>TECHNICAL CHANGE: Change made to make sure code consistently applies uniformly to IT transactions.</p> <p>TECHNICAL CHANGE: Change made to reflect Board restructuring.</p>
SECTION 11-35-1230. Auditing and fiscal reporting.	
<p>(1) The Office of General Services<u>Designated Board Office</u> through consultation with the chief procurement officers shall develop written plans for the auditing of state procurements.</p>	<p>TECHNICAL CHANGE: Change made to reflect Board restructuring.</p>
<p>In procurement audits of governmental bodies thereafter, the auditors from the Office of General Services<u>Designated Board Office</u> shall review the adequacy of the system's internal controls in order to ensure compliance with the requirement of this code and the ensuing regulations. Any noncompliance discovered through audit must be transmitted in management letters to the audited governmental body and the Budget and Control Board. The auditors shall provide in writing proposed corrective action to governmental bodies. Based upon audit recommendations of the Office of General Services<u>Designated Board Office</u>, the board may revoke certification as provided for in Section 11-35-1210 and require the governmental body to make all procurements through the <u>appropriate chief procurement officer</u>office of materials management above a dollar limit set by the board until such time as the board is assured of compliance with this code and its regulations by that governmental body.</p>	<p>TECHNICAL CHANGE: Change made to reflect Board restructuring.</p>
<p>(2) The Division of Budget Analysis, or other office or division within the Budget and Control Board, in consultation with the Comptroller General, shall assume responsibility for operation and maintenance of the automated quarterly fiscal reporting procedures. The Comptroller General and the Division of Budget Analysis, or other office or division within the Budget and Control Board, shall assume responsibility for providing quarterly reports to the General Assembly regarding the status of personnel positions, budgets, transfers, and expenditures in all state agencies, departments, and institutions in a format developed in consultation with the Legislative Audit Council. The Legislative Audit Council shall periodically review the reporting system and coordinate legislative information needs with the Office of the Comptroller General and the Division of Budget Analysis, or other office or division within the Budget and Control Board, as necessary. All agencies, departments and institutions of state government shall report to the Comptroller General and the Division of Budget Analysis, or other office or division within the Budget and Control Board, any required information. The Legislative Audit Council shall undertake a periodic review of the reporting</p>	

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

and data analysis system developed by the division for reporting both commodities purchased and those not purchased through the division's central purchasing system, and shall make recommendations for incorporating these reporting procedures into the Statewide Accounting and Reporting System (STARS) as necessary to reduce unnecessary duplication and improve efficiency, effectiveness, and accountability.	
SECTION 11-35-1270. Authority to contract for certain services:	Deletion of this provision is consistent with changes to the 2000 Model Procurement Code, which dispensed with a unique purchasing rule for professional services.
For the purpose of procuring any professional services not included in the purchasing authority of this code and the ensuing regulations, where the person employed is customarily employed on a fee basis rather than by competitive bidding (e.g., clergy, dentists, physicians), a governmental body may act as a purchasing agent and contract on its own behalf for such services, subject to this code and regulations which may be established by the board.	
SECTION 11-35-1410. Definitions of terms used in this article.	
Unless the context clearly indicates otherwise:	
(1) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the cost principles as provided in Article 13 of this chapter and a fee, if any.	
(2) "Established catalog price" means the price included in a catalog, price list, schedule, or other form that:	
(a) is regularly maintained by a manufacturer or vendor of an item;	
(b) is either published or otherwise available for inspection by customers;	
(c) states prices at which sales are currently or were last made to a significant number of buyers constituting the general buying public for the supplies, or services, or information technology involved.	TECHNICAL CHANGE: Change made to make sure code consistently applies uniformly to IT transactions.
(3) "Invitation for bids" means all documents, whether attached or incorporated by reference, utilized for soliciting bids in accordance with the procedures set forth in Section 11-35-1520.	
(4) "Purchase description" means specifications or any other document describing the supplies, services, information technology, or construction to be procured.	TECHNICAL CHANGE: Change made to make sure code consistently applies uniformly to IT transactions.
(5) "Request for proposals" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.	
(6) "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance which may be substantiated by past performance.	
(7) "Responsive bidder or offeror" means a person who has submitted a bid or offer which conforms in all material aspects to the invitation for bids or request for proposals.	
SECTION 11-35-1510. Methods of source selection.	
Unless otherwise provided by law, all state contracts shall be awarded by one of the following methods: by competitive sealed bidding, pursuant to Section 11-35-1520, except as provided in:	REMOVE PREFERENCE FOR COMPETATIVE SEALED BIDS: Change eliminates need to justify in writing every use of a purchasing procedure other than awarding to the low bidder.
(1) Section 11-35-1250 (Authority to Contract for Auditing Services);	Moved from below to order sequentially

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

(2) Section 11-35-1260 (Authority to Contract for Legal Services);	Moved from below to order sequentially
(3) Section 11-35-1520 (Competitive Sealed Bidding);	TECHNICAL CHANGE: Change necessitated by change elsewhere in code. See Attachment "B"
(41) Section 11-35-1525 (Fixed Priced Bidding);	
(52) Section 11-35-1528 (Competitive Best Value Bidding);	
(3) Section 11-35-1250 (Authority to Contract for Auditing Services);	Moved above to order sequentially
(4) Section 11-35-1260 (Authority to Contract for Legal Services);	Moved above to order sequentially
(5) Section 11-35-1270 (Authority to Contract for Certain Services);	TECHNICAL CHANGE: Change necessitated by change elsewhere in code.
(6) Section 11-35-1529 (Competitive Reverse Auction Bidding);	TECHNICAL CHANGE: Items in this section were re-ordered.
(76) Section 11-35-1530 (Competitive Sealed Proposals);	
(87) Section 11-35-1540 (Negotiations After Unsuccessful Competitive Sealed Bidding);	
(98) Section 11-35-1550 (Small Purchases);	
(109) Section 11-35-1560 (Sole Source Procurements);	
(110) Section 11-35-1570 (Emergency Procurements);	
(124) Section 11-35-1575 (Procurements at Participation in Auction or Bankruptcy Sale);	
(12) Section 11-35-1580 (Procurement of Information Technology);	TECHNICAL CHANGE: Reference to 11-35-1580 is removed because this section is not a Source Selection method, but authority for ITMO.
(13) Section 11-35-3020 (Construction Procurement Procedures);	
(14) Section 11-35-3220 (Architect-Engineer, Construction Management and Land Surveying Services Procurement Procedures);	
(15) Section 11-35-3230 (Exception for Small Architect-Engineer and Land Surveying Services Contracts).	
(16) Section 11-35-1529 (Competitive On-line Bidding);	TECHNICAL CHANGE: Items in this section were re-ordered.
SECTION 11-35-1520. Competitive sealed bidding.	
(1) Condition for Use. Contracts greater than fifty amounting to twenty-five thousand dollars or more shall be awarded by competitive sealed bidding except as otherwise provided in Section 11-35-1510.	RAISING SMALL PURCHASE THRESHOLDS: Changed to dovetail with changes to small purchase limits. For overview, see Attachment "B" & "D"
(2) Invitation for Bids. An invitation for bids shall be issued in an efficient and economical manner and shall include specifications and all contractual terms and conditions applicable to the procurement.	
(3) Notice. Adequate notice of the invitation for bids shall be given at a reasonable time prior to the date set forth therein for the opening of bids. Such notice shall include publications in a newspaper of general circulation in the State such as "South Carolina Business Opportunities" or through a means of central electronic advertising as approved by the Office of General Services Designated Board Office. Governmental bodies may charge vendors the cost incurred for copying and mailing bid or proposal documents requested in response to a procurement.	TECHNICAL CHANGE: Elimination of reference to "newspaper of general circulation" parallels longstanding requirement in 11-35-1550(4) to use SCBO. TECHNICAL CHANGE: Added language identical to language found in 11-25-1550(4).
(4) Receipt and Safeguarding of Bids. All bids (including modifications) received prior to the time of opening shall be kept secure and unopened, except as provided for by regulation of the board.	
(5) Bid Opening. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids and	

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

in the manner prescribed by regulation of the board. The amount of each bid, and such other relevant information as may be specified by regulation, together with the name of each bidder, shall be tabulated. The tabulation shall be open to the public inspection at that time.	
(6) Bid Acceptance and Bid Evaluation. Bids shall be accepted unconditionally without alteration or correction, except as otherwise authorized in this code. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the invitation for bids. Bids shall be evaluated based on the requirements set forth in the invitation for bids and in accordance with the regulations of the board.	
(7) Correction or Withdrawal of Bids; Cancellation of Awards. Correction or withdrawal of inadvertently erroneous bids before bid opening, withdrawal of inadvertently erroneous bids after award, or cancellation and reward of awards or contracts, after award but prior to performance may be permitted in accordance with regulations promulgated by the board. After bid opening no changes in bid prices or other provisions of bids prejudicial to the interest of the State or fair competition shall be permitted. <u>After opening, bids may not be corrected or withdrawn except in accordance with the provisions of this code and the regulations promulgated under it.</u> Except as otherwise provided by regulation, all decisions to permit the correction or withdrawal of bids, or to cancel awards, or contracts, after award but prior to performance shall be supported by a written determination of appropriateness made by the chief procurement officers or head of a purchasing agency.	Change addresses a gap in the statute, which does not facially address changes after opening. Added to insure bids could not be withdrawn unless allowed by law. Similar to requirement in 11-35-3030(1)(d). See Attachment "D"
(8) Discussion with Bidders. As provided in the invitation for bids, discussions may be conducted with apparent responsive bidders for the purpose of clarification to assure full understanding of the requirements of the invitation for bids. All bids, in the procuring agency's sole judgment, needing clarification shall be accorded such an opportunity. Clarification of any bidder's bid must be documented in writing by the procurement officer and shall be included with the bid. Documentation concerning the clarification shall be subject to disclosure upon request as required by Section 11-35-410.	
(9) Tie Bids. If two or more bidders are tied in price while otherwise meeting all of the required conditions, awards are determined <u>in the following order of priority</u> as follows:	TECHNICAL CHANGE: Simple clarification.
(a) If there is a South Carolina firm tied with an out-of-state firm, the award must be made automatically to the South Carolina firm.	
(b) Tie bids involving South Carolina produced or manufactured products, when known, and items produced or manufactured out of the State must be resolved in favor of the South Carolina commodity.	
(c) Tie bids involving <u>a business certified by the South Carolina Office of Small and Minority Business Assistance as a Minority Business Enterprise must be resolved in favor of the Minority Business Enterprise.</u>	NEW MBE INCENTIVES: Resolve tie bids in favor of MBEs, if tie not already resolved in favor in in-state firms. For overview, see Attachment "E"
(de) Tie bids involving South Carolina firms must be resolved in favor of the South Carolina firm located in the same taxing jurisdiction as the governmental body's consuming location.	
(d) Tie bids involving South Carolina firms in the same taxing jurisdiction as the governmental body's consuming location must be resolved by the flip of a coin in the office of the chief procurement officer or the head of a purchasing agency or either officer's designee witnessed by all interested parties.	
(de) In all other situations where bids are tied, the award will be made by the purchasing agency to the tied bidder offering the quickest delivery time, or if the tied bidders have offered the same delivery time, the tie shall be resolved	TECHNICAL CHANGE: References to procuring agency & purchasing agency revised to dovetail with definitions. Other

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

by the flip of a coin in the office of the chief procurement officer or the head of a purchasing agency or either officer's designee witnessed by all interested parties the procurement officer. All responding vendors shall be invited to attend..	similar clarifications made.
(10) Award. Unless there is a compelling reason to reject bids as prescribed by regulation of the board, notice of an intended award of a contract shall be given to the lowest responsive and responsible bidders whose bid meets the requirements set forth in the invitation for bids shall be given by posting such notice at a location specified in the invitation for bids. For contracts with a total or potential value in excess of fifty thousand dollars but less than one hundred thousand dollars, notice of the award of a contract shall be given by posting and shall be sent to all bidders responding to the solicitation on the same day that such notice is posted in accordance with this section. For contracts with a total or potential value of one hundred thousand dollars or greater, notice of an intended award of a contract shall be given by posting the notice for ten days prior to entering into a contract and shall be sent to all bidders responding to the solicitation on the same day that such notice is posted in accordance with this section. The posting date must appear on the face of all such notices. Prior to the posting of the award, the procuring agency may negotiate with the lowest responsive and responsible bidder to lower his bid within the scope of the invitation for bids. The invitation for bids and any notice of award or notice of intent to award the posted notice must contain a statement of a bidder's right to protest under Section 11-35-4210(1) and the date and location of posting must be announced at bid opening. When a contract has a total or potential value in excess of fifty thousand dollars, in addition to the posted notice, notice of an intended award must be given to all bidders responding to the solicitation, except when only one response is received. Such notice must contain a statement of the bidder's right to protest under Section 11-35-4210(1).	See Attachment "C"
When a contract has a total or potential value in excess of fifty thousand dollars, sixteen days after notice is given the agency may enter a contract with the bidder named in the notice in accordance with the provisions of this code and of the bid solicited. When only one response is received, the notice of intent to intended award and the sixteen-day delay of award may be waived. A determination of responsibility must be made before award in accordance with Section 11-35-1810.	
(11) Request for Qualifications. Prior to soliciting bids, the procuring agency, acting through the procurement officer, may issue a request for qualifications from prospective bidders. Such request shall contain at a minimum a description of the scope of work goods or services to be solicited by the invitation for bids, the general scope of the work, the deadline for submission of information, and how prospective bidders may apply for consideration. The request shall require information concerning the prospective bidders' product specifications, qualifications, experience, and ability to perform the requirements of the contract. Adequate public notice of the request for qualifications shall be given in the manner provided in Section 11-35-1520(3). The use of the request for qualifications is subject to the approval of the Office of General Services.	REMOVE SOME BOARD APPROVAL REQUIRMENTS: With this change, agencies may use the pre-qualification process without first seeking approval from the Office of General Services or its successor. Second change is made to eliminate redundancy, since the scope of work includes a description of any goods or services to be acquired.
After receipt of the responses to the request for qualifications from prospective bidders, the prospective bidders shall be ranked of the prospective bidders shall be determined in writing from most qualified to least qualified on the basis of the information provided. Bids shall then be solicited from at least the top two prospective bidders by means of an invitation for bids. <u>The determination regarding how many bids to solicit is not subject to review under Article 17.</u> The failure of a prospective bidder to	First change provides RFQ evaluations with the same level of protection afforded to other procurement evaluations - the evaluation is final unless arbitrary. Second change revises a particularly ambiguous provision. As rewritten, the

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

be selected to receive the invitation for bids shall not be grounds for protest under Section 11-35-4210.	determination of how many pre-qualified vendors can participate in a solicitation is simply not protestable. The evaluation process by which those vendors are ranked is protestable, but only to the extent the evaluation was arbitrary. (See first change to this paragraph.)
(12) [omitted] Provisions Not to Apply. The provisions of this section shall not apply to maintenance services for aircraft of the Division of Aeronautics of the Department of Commerce.	Please see 11-35-1550(4).
(13) Minor Informalities and Irregularities in Bids. A minor informality or irregularity is one which is merely a matter of form or is some immaterial variation from the exact requirements of the invitation for bids having no effect or merely a trivial or negligible effect on total bid price, quality, quantity, or delivery of the supplies or performance of the contract, and the correction or waiver of which would not be prejudicial to bidders. The procurement officer shall either give the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or waive any such deficiency when it is to the advantage of the State. Such communication or determination shall be in writing. Examples of minor informalities or irregularities include, but are not limited to:	
(a) failure of a bidder to return the number of copies of signed bids required by the solicitation;	
(b) failure of a bidder to furnish the required information concerning the number of the bidder's employees or failure to make a representation concerning its size;	
(c) failure of a bidder to sign its bid, but only if the firm submitting the bid has formally adopted or authorized the execution of documents by typewritten, printed, or rubber stamped signature and submits evidence of such authorization, and the bid carries such a signature or the unsigned bid is accompanied by other material indicating the bidder's intention to be bound by the unsigned document, such as the submission of a bid guarantee with the bid or a letter signed by the bidder with the bid referring to and identifying the bid itself;	
(d) failure of a bidder to acknowledge receipt of an amendment to a solicitation, but only if:	
(i) the bid received indicates in some way that the bidder received the amendment, such as where the amendment added another item to the solicitation and the bidder submitted a bid, thereon, provided that the bidder states under oath that it received the amendment prior to bidding and that the bidder will stand by its bid price or,	
(ii) the amendment has no effect on price or quantity or merely a trivial or negligible effect on quality or delivery, and is not prejudicial to bidders, such as an amendment correcting a typographical mistake in the name of the governmental body;	
(e) failure of a bidder to furnish an affidavit concerning affiliates;	
(f) failure of a bidder to execute the certifications with respect to Equal Opportunity and Affirmative Action Programs;	
(g) failure of a bidder to furnish cut sheets or product literature;	
(h) failure of a bidder to furnish certificates of insurance;	
(i) failure of a bidder to furnish financial statements;	
(j) failure of a bidder to furnish references;	
(k) failure of a bidder to furnish its bidder number; and	
(l) notwithstanding Title 40 Section 40-11-180, the failure of a bidder to indicate his contractor's license number or other evidence of licensure,	Due to constant changes in the licensing laws for contractors, the reference to a specific

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

provided that no contract shall be awarded to the bidder unless and until the bidder is properly licensed under the laws of South Carolina.	provision was substituted for a reference to the Title in which such licensing laws are codified.
SECTION 11-35-1524. Resident vendor preference.	
(A) A preference of seven percent must be provided to vendors who are residents of South Carolina or whose products are made, manufactured, or grown in South Carolina as set forth in this section.	
(B) As used in this section, unless the context indicates otherwise, the terms below have the following meanings:	
(1) "Made" means to assemble, fabricate, or process component parts into a finished end-product, the value of which assembly, fabrication or processing is a significant portion of the value of the finished end-product.	
(2) "Manufacture" means to make or process raw materials into a finished end-product.	
(3) "Grown" means to produce, cultivate, raise, or harvest timber, agricultural produce, or livestock on the land, or to cultivate, raise, catch, or harvest products or food from the water which results in an end-product that is locally derived from the product cultivated, raised, caught, or harvested.	
(4) "End-product" means the item sought by the governmental body of the State and described in the solicitation including all component parts and in final form and ready for the use intended by the governmental body.	
(5) "Unreasonable Cost" means:	
(a) the cost of an item from a resident vendor or an end-product made, manufactured, or grown in South Carolina is unreasonable if the bid exceeds by more than seven percent the lowest qualified bid on the same item or end-product which is made, manufactured, or grown in other states of the United States, or in a foreign country or territory;	
(b) the cost of an end-product made, manufactured, or grown in other states of the United States is unreasonable if the bid exceeds by more than two percent the lowest qualified bid on the same or similar end-product which is made, manufactured, or grown in a foreign country or territory;	
(6) "Resident vendor" means a vendor who is considered to be a resident of this State if the vendor:	
(a) is an individual, partnership, association, or corporation that is authorized to transact business within the State, and if required, has registered with the South Carolina Department of Revenue,	First change eliminates ambiguity. Second change expressly ties the benefits of the resident vendor preference to registration with DOR.
(b) maintains an office in the State and has maintained an office in this State for at least one year prior to publication of the solicitation,	Change prevents vendors from gaining the benefits of the resident vendor preference by establishing an agent in SC solely for the purpose of bidding on a state contract.
(c) maintains an inventory for expendable items which are representative of the general type of commodities on which the bid is submitted and located in South Carolina at the time of the bid having a total value of ten thousand dollars or more based on the bid price, but not to exceed the amount of the contract, or is a manufacturer which is headquartered and has at least a ten million dollar payroll in South Carolina and the product is made or processed from raw materials into a finished end-product by such manufacturer or an affiliate (as defined in Section 1563 of the Internal Revenue Code) of such manufacturer, and	
(d) has paid all assessed taxes.	
(C) Application. Competitive procurements made by governmental bodies shall be made from vendors resident to South Carolina or vendors who bid	

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

end-products made, manufactured, or grown in South Carolina or in the United States if available, provided that (1) the bidder has certified in writing in the bid that he or she is resident to the State, or (2) the bidder has certified in writing in the bid that the end-product was made, manufactured, or grown in South Carolina or in the United States, (3) the end-product is available, and (4) the cost of the end-product is not unreasonable. In order to receive the award the vendor must be a responsible and responsive bidder, and the bid must otherwise comply with the Procurement Code and Regulations.	
In the case of a request for resident vendor status, this requirement shall apply to the entire solicitation. In the case of a request for end-product status, this requirement shall apply to each line item or each lot in a solicitation to which a separate, responsive bid may be made.	
(D) Exceptions. This section shall not apply: (1) to any procurements conducted under Article 9 or 19 of the 1976 Code; (2) to any prime contractor or subcontractor providing materials or services relating to permanent improvements to real estate; (3) to any solicitation, bid, offer, or procurement when the price of a single unit of the end-product is more than thirty thousand dollars, whether or not more than one unit is bid or offered; (4) to any solicitation, bid, offer, or procurement where the contract award is less than ten thousand dollars; (5) to any solicitation conducted under <u>Section 11-35-1528 or Section 11-35-1530</u> of the 1976 Code; or (6) to any solicitation, bid, offer, or procurement of motor vehicles as defined in Section 56-15-10.	Because in-state preferences cannot be applied to multi-state cooperative purchases, the reference to Article 19 is needed here. Solicitations conducted as competitive sealed proposals were exempted from application of the in-state preference because the preference was difficult, if not impossible, to dovetail with the RFP evaluation process, particularly when pricing is not an evaluation factor. Because Best Value Bids, governed by 11-35-1528, are evaluated in the same fashion, Best Value Bids need to be exempted from application of the in-state bidders preference.
(E) Enforcement. A bidder shall be suspended or debarred from doing business with the State in accordance with Section 11-35-4220 of the South Carolina Consolidated Procurement Code if the chief procurement officer determines that the certification made by the bidder as to the resident vendor request or the origin of the end-product was filed under false pretenses and is not valid. In addition, if the bidder with the invalid certification of origin was awarded the contract, he shall also pay the State of South Carolina the amount by which the bid based on the invalid certification exceeded the lowest responsible and responsive bid that would have been selected but for the invalid certification.	
If a bidder has not requested the preference, he will neither be entitled to claim any preference against another bidder nor will he be protected from application of another bidder's claim to a preference against his bid in determining contract award.	
(F) If a vendor qualifies as a resident vendor and is bidding a product made, manufactured, or grown in South Carolina, an additional three percent preference must be given if claimed by the bidder.	
SECTION 11-35-1525. Competitive fixed price bidding.	
(1) Conditions for Use. When a purchasing agency determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the State, a A contract may be entered into by competitive fixed price bidding subject to the provisions of Section 11-35-1520 and the ensuing regulations, unless otherwise provided for in this section.	REMOVE PREFERENCE FOR COMPETATIVE SEALED BIDS: Change eliminates need to justify in writing every use of a purchasing procedure other than awarding to the low bidder.
(2) Fixed Price Bidding. The purpose of fixed price bidding is to provide multiple sources of supply for specific goods or services based on a preset maximum price which the State will pay for such goods or services.	
(3) Public Notice. Adequate public notice of the solicitation shall be given in	

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

the same manner as provided in Section 11-35-1520(3).	
(4) Pricing. The State shall establish, prior to issuance of the fixed price bid, a maximum amount the State will pay for the goods or services desired.	
(5) Evaluation. Vendors' responses to the fixed price bid will be reviewed to determine if they are responsive and responsible.	
(6) Discussion with Responsive Bidders. Discussions may be conducted with apparent responsive bidders to assure understanding of the requirements of the fixed price bid. All bidders whose bids, in the procuring agency's sole judgment, need clarification shall be accorded such an opportunity.	
(7) Award. Award must be made to all responsive and responsible bidders to the state's request for competitive fixed price bidding. The contract file shall contain the basis on which the award is made and must be sufficient to satisfy external audit.	
(8) Bids Received After Award. Bidders not responding to the initial fixed price bid may be added to the awarded vendors' list provided the bidder furnishes evidence of responsibility and responsiveness to the state's original fixed price bid as authorized by the solicitation.	
(9) Remedies. The failure of a specific offeror to receive business, once it has been added to the awarded vendors' list, shall not be grounds for a contract controversy under Section 11-35-4230.	
SECTION 11-35-1528. Competitive best value bidding.	
(1) Conditions for Use. When a purchasing agency determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the State, a contract may be entered into by competitive best value bidding subject to the provisions of Section 11-35-1520 and the ensuing regulations, unless otherwise provided for in this section.	REMOVE PREFERENCE FOR COMPETATIVE SEALED BIDS: Change eliminates need to justify in writing every use of a purchasing procedure other than awarding to the low bidder.
(2) Best Value Bidding. The purpose of best value bidding is to allow factors other than price to be considered in the determination of award for specific goods or services based on pre-determined criteria identified by the State.	
(3) Public Notice. Adequate public notice of the request for the solicitation shall be given in the same manner as provided in Section 11-35-1520(3).	
(4) Bid Opening. At bid opening, the only information that will be released is the names of the participating bidders. Cost information will be provided after the ranking of bidders and the issuance of award.	
(5) Evaluation Factors. The best value bid shall state the factors to be used in determination of award and the numerical weighting for each factor. Cost must be a factor in determination of award and cannot be weighted at less than sixty percent. Best value bid evaluation factors may include, but are not limited to, any of the following as determined by the purchasing agency procurement officer in its sole discretion and not subject to protest:	TECHNICAL CHANGE: References to procuring agency & purchasing agency revised to dovetail with definitions. Other similar clarifications made.
(a) operational costs that the State would incur if the bid is accepted;	
(b) quality of the product or service, or its technical competency;	
(c) reliability of delivery and implementation schedules;	
(d) maximum facilitation of data exchange and systems integration;	
(e) warranties, guarantees, and return policy;	
(f) vendor financial stability;	
(g) consistency of the proposed solution with the state's planning documents and announced strategic program direction;	
(h) quality and effectiveness of business solution and approach;	
(i) industry and program experience;	
(j) prior record of vendor performance;	
(k) vendor expertise with engagement of similar scope and complexity;	

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

(l) extent and quality of the proposed participation and acceptance by all user groups;	
(m) proven development methodologies and tools; and	
(n) innovative use of current technologies and quality results.	
(6) Discussion with Responsive Bidders. Discussions may be conducted with apparent responsive bidders to assure understanding of the best value bid. All bidders whose bids, in the procuring agency's sole judgment, need clarification shall be accorded such an opportunity.	
(7) Selection and Ranking. Bids shall be evaluated by using only the criteria stated in the best value bid and by adhering to the weighting as assigned. All evaluation factors, other than cost, will be considered prior to determining the effect of cost on the score for each participating bidder. Once the evaluation is complete, all responsive bidders shall be ranked from most advantageous to least advantageous to the State, considering only the evaluation factors stated in the best value bid.	
(8) Award. Award must be made to the responsive and responsible bidder whose bid is determined, in writing, to be most advantageous to the State, taking into consideration all evaluation factors set forth in the best value bid. The contract file shall contain the basis on which the award is made and must be sufficient to satisfy external audit.	
SECTION 11-35-1529. Competitive <u>Reverse Auction</u> on-line bidding.	TECHNICAL CHANGE: The title to this statute is changed to avoid confusion; the concept of "on-line bidding" is considered much broader than the reverse auction authorized by this statute.
(1) Conditions for Use. When a purchasing agency determines that on-line bidding is more advantageous than other procurement methods provided by this code, a contract may be entered into by competitive on-line bidding, subject to the provisions of Section 11-35-1520 and the ensuing regulations, unless otherwise provided in this section.	REMOVE PREFERENCE FOR COMPETATIVE SEALED BIDS: Change eliminates need to justify in writing every use of a purchasing procedure other than awarding to the low bidder.
(2) Bidding Process. The solicitation must designate both an Opening Date and Time and a Closing Date and Time. The Closing Date and Time need not be a fixed point in time, but may remain dependant on a variable specified in the solicitation. At the Opening Date and Time, the State must begin accepting real-time electronic bids. The solicitation must remain open until the Closing Date and Time. The State may require bidders to register before the Opening Date and Time and, as a part of that registration, to agree to any terms, conditions, or other requirements of the solicitation. Following receipt of the first bid after the Opening Date and Time, the lowest bid price must be posted electronically to the Internet and updated on a real-time basis. At any time before the Closing Date and Time, a bidder may lower the price of its bid, except that after Opening Date and Time, a bidder may not lower its price unless that price is below the then lowest bid. Bid prices may not be increased after Opening Date and Time. Except for bid prices, bids may be modified only as otherwise allowed by this code. A bid may be withdrawn only in compliance with Section 11-35-1520. If a bid is withdrawn, a later bid submitted by the same bidder may not be for a higher price. If the lowest responsive bid is withdrawn after the Closing Date and Time, the State may cancel the solicitation in accordance with this code or reopen electronic bidding to all pre-existing bidders by giving notice to all pre-existing bidders of both the new Opening Date and Time and the new Closing Date and Time. Notice that electronic bidding will be reopened must be given as specified in the solicitation.	

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

(3) Receipt and Safeguarding of Bids. Other than price, any information provided to the State by a bidder must be safeguarded as required by Section 11-35-1520(4).	
(4) Provisions Not to Apply. Section 11-35-1524 and paragraph (5) (Bid Opening) of Section 11-35-1520 do not apply to solicitations issued pursuant to this section.	
SECTION 11-35-1530. Competitive sealed proposals.	
(1) Conditions for Use. When a purchasing agency determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the State, a A contract may be entered into by competitive sealed proposals subject to the provisions of Section 11-35-1520 and the ensuing regulations, unless otherwise provided for in this section. Subject to the requirements of Section 11-35-3220, the board may provide by regulation that it is either not practicable or not advantageous to the State to procure specified types of supplies, services, <u>information technology</u> , or construction by competitive sealed bidding.	TECHNICAL CHANGE: Change made to make sure code consistently applies uniformly to IT transactions.
(2) Public Notice. Adequate public notice of the request for proposals shall be given in the same manner as provided in Section 11-35-1520(3).	
(3) Receipt of Proposals. Proposals shall be opened publicly in accordance with regulations of the board. A tabulation of proposals shall be prepared in accordance with regulations promulgated by the board and shall be open for public inspection after contract award.	
(4) Request for Qualifications. Prior to soliciting proposals, the procuring agency, acting through the procurement officer, may issue a request for qualifications from prospective offerors. Such request shall contain at a minimum a description of the <u>scope of work</u> goods or services to be solicited by the request for proposals and the general scope of the work and shall state the deadline for submission of information and how prospective offerors may apply for consideration. The request shall require information only on their qualifications, experience, and ability to perform the requirements of the contract.	TECHNICAL CHANGE: References to procuring agency & purchasing agency revised to dovetail with definitions. Other similar clarifications made. Second change is made to simplify the process and eliminate a redundancy, since the scope of work includes a description of any goods or services required.
After receipt of the responses to the request for qualifications from prospective offerors, the perspective offerors shall be ranked of the prospective offerors shall be determined in writing from most qualified to least qualified on the basis of the information provided. Proposals shall then be solicited from at least the top two prospective offerors by means of a request for proposals. The determination regarding how many proposals to solicit is not subject to review under Article 17. The failure of a prospective offeror to be selected to receive the request for proposals shall not be grounds for protest under Section 11-35-4210.	First change provides RFQ evaluations with the same level of protection afforded to other procurement evaluations - the evaluation is final unless arbitrary. Second change revises a particularly ambiguous provision. As rewritten, the determination of how many pre-qualified vendors can participate in a solicitation is simply not protestable. The evaluation process by which those vendors are ranked is protestable, but only to the extent the evaluation was arbitrary. (See first change to this paragraph.)
(5) Evaluation Factors. The request for proposals shall state the relative importance of the factors to be considered in evaluating proposals but shall not require a numerical weighting for each factor. Price may but need not be an evaluation factor.	
(6) Discussion with Offerors. As provided in the request for proposals, discussions may be conducted with apparent responsive offerors for the purpose of clarification to assure full understanding of the requirements of the request for proposals. As provided in the Request for Proposals, and under	The new text for the first sentence is a close adaptation of the 2000 Model Procurement Code's provision regarding discussions with offerors. The change reflects increased

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

<p><u>regulations, discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. All offerors, whose proposals, in the procuring agency procurement officer's sole judgment, need clarification shall be accorded such an opportunity.</u></p>	<p>flexibility to communicate with offerors after opening and prior to award, but only in competitive sealed proposals. This change is suggested because the state is losing the opportunity to contract with innumerable qualified vendors due to relatively minor issues that such communication may be able to solve. As stated in the Comments to the new Model Code, this sentence "provides the procurement official an opportunity to make certain that offerors fully understand the solicitation requirements and provides offerors an opportunity to clarify proposals where necessary so as to assure responsiveness to the solicitation. Price discussions can best be conducted when there is a mutual understanding of the contractual requirements. Clarifications are intended to promote exchanges between the state and an offeror that may occur when an award is contemplated without discussions, for example, to resolve minor or clerical errors or ambiguities in proposals." 2000 Model Procurement Code, Section 3-203, cmt.1.</p> <p>TECHNICAL CHANGE: References to procuring agency & purchasing agency revised to dovetail with definitions. Other similar clarifications made.</p>
<p>(7) Selection and Ranking. Proposals shall be evaluated using only the criteria stated in the request for proposals and there must be adherence to any weightings that have been previously assigned. Once evaluation is complete, all responsive offerors shall be ranked from most advantageous to least advantageous to the State, considering only the evaluation factors stated in the request for proposals. If price is an initial evaluation factor, award shall be made in accordance with Section 11-35-1530(9) below.</p>	
<p>(8) Negotiations. Whether price was an evaluation factor or not, the procuring agency, through the procurement officer<u>appropriate procurement official</u>, may, in <u>his</u>its sole discretion and not subject to <u>review under Article 17</u>challenge through a protest filed under Section 11-35-4210, proceed in any of the manners indicated below:</p>	<p>TECHNICAL CHANGE: References to procuring agency & purchasing agency revised to dovetail with definitions. Other similar clarifications made.</p>
<p>(a) negotiate price with the highest ranked offeror. If a satisfactory price cannot be agreed upon, price negotiations may be conducted, in the sole discretion of the procuring agency, with the second, and then the third, and so on, ranked offerors to such level of ranking as determined by the procuring agency in its sole discretion; or</p>	<p>TECHNICAL CHANGE: Paragraphs (a) and (b) have been merged. In practice, the state negotiates with the highest ranked offeror on both scope and price.</p>
<p>(ab) Negotiate with the highest ranking offeror on price, on matters affecting the scope of the contract, so long as the changes are within the general scope of the request for proposal<u>overall nature and intent of the contract is not changed, or on both. If a satisfactory contract cannot be negotiated with the highest ranking offeror, negotiations may be conducted, in the sole discretion of the procurement officer</u>procuring agency, with the second, and then the third, and so on, ranked offerors to such level of ranking as determined by the <u>procurement officer</u>procuring agency in its sole discretion; or</p>	
<p>(be) During the negotiation process as outlined in subsections (a) and (b)</p>	<p>TECHNICAL CHANGE: References to</p>

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

above, if the procurement officer an agency is unsuccessful in its first round of negotiations, it may reopen negotiations with any offeror with whom it previously negotiated; or	procuring agency & purchasing agency revised to dovetail with definitions. Other similar clarifications made.		
(cd) if, after following the procedures set forth in Section 11-35-1530(8), a contract is not able to be negotiated. The procurement officer may make changes within the general scope of the request for proposals and provide may be changed in an effort to reduce the cost to a fair and reasonable amount, and all responsive offerors an opportunity must be allowed to submit their best and final offers.			
(d) In conducting negotiations, there must be no disclosure of any confidential information derived from proposals and negotiations submitted by competing offerors.			
(9) Award. Award must be made to the responsive responsible offeror whose proposal is determined in writing to be the most advantageous to the State, taking into consideration price and the evaluation factors set forth in the request for proposals, unless the procurement officer procuring agency determines to utilize one of the options provided in Section 11-35-1530(8). The contract file shall contain the basis on which the award is made and must be sufficient to satisfy external audit. Procedures and requirements for the notification of intent to award the contract shall be the same as those stated in Section 11-35-1520(10).			
SECTION 11-35-1550. Bid procedures on procurements not exceeding up to fifty <u>twenty-five</u> thousand dollars.	RAISING THRESHOLDS	SMALL	PURCHASE
Authority. (1) The following small purchase procedures may be utilized <u>only</u> in conducting procurements for governmental bodies that are less than up to fifty <u>twenty-five</u> thousand dollars in actual or potential value. A governmental body <u>An agency</u> may conduct its own procurement under up to fifty <u>five</u> thousand dollars in actual or potential value, and a governmental body <u>an agency</u> that has received procurement certification pursuant to Section 11-35-1210 to handle the type and estimated value of the procurement may conduct the procurement under its own authority in accordance with the procedures prescribed in this section; however, procurement requirements must not be artificially divided by governmental bodies so as to constitute a small purchase under this section.	RAISING THRESHOLDS	SMALL	PURCHASE
(2) Competition and Price Reasonableness. (a) Purchases Not in Excess of One Two <u>One Thousand Five Hundred</u> Dollars. Small purchases not exceeding one two <u>one thousand five hundred</u> dollars may be accomplished without securing competitive quotations if the prices are considered to be reasonable. The purchasing office shall annotate the purchase requisition: "Price is fair and reasonable" and sign. The purchases must be distributed equitably among qualified suppliers. When practical, a quotation must be solicited from other than the previous supplier before placing a repeat order. The administrative cost of verifying the reasonableness of the price of purchase "not in excess of" may more than offset potential savings in detecting instances of overpricing. Action to verify the reasonableness of the price need be taken only when the procurement officer of the governmental body suspects that the price may not be reasonable, comparison to previous price paid, or personal knowledge of the item involved.	RAISING THRESHOLDS:	SMALL For overview,	PURCHASE see Attachment "B"
(b) Purchases from one thousand five hundred one dollars to five thousand dollars. Solicitations of verbal or written quotes from a minimum of three qualified sources of supply must be made and documentation of the quotes attached to the purchase requisition. The award shall be made to the lowest responsive and responsible source.	RAISING THRESHOLDS:	SMALL For overview,	PURCHASE see Attachment "B"

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

(be) Purchases over from two five thousand five hundred one dollars to ten thousand dollars. Solicitation of written quotes from a minimum of three qualified sources of supply must be made and documentation of the quotes attached to the purchase requisition <u>for any small purchase over two thousand five hundred dollars but not in excess of ten thousand dollars</u> . The award must be made to the lowest responsive and responsible sources.	RAISING SMALL PURCHASE THRESHOLDS: For overview, see Attachment "B"
(cd) Purchases over from ten thousand one dollars <u>up to twenty-five</u> fifty thousand dollars. Written solicitation of written quotes, bids, or proposals shall be made <u>for any small purchase over ten thousand dollars but not in excess of fifty thousand dollars</u> . The procurement must be advertised at least once in the South Carolina Business Opportunities publication or through a means of central electronic advertising as approved by the Office of General Services <u>Designated Board Office</u> . A copy of the written solicitation and written quotes must be attached to the purchase requisition. The award shall be made to the lowest responsive and responsible source or, when a request for proposal process is used, the highest ranking offeror.	RAISING SMALL PURCHASE THRESHOLDS: For overview, see Attachment "B" TECHNICAL CHANGE: Change made to reflect Board restructuring.
(3) Protest rights. The provisions of Section 11-35-4210 do not apply to contracts awarded under the procedures set forth in this section.	TECHNICAL CHANGE: Moved to 11-35-4210.
(34) All competitive procurements above tent twenty-five thousand dollars must be advertised at least once in the South Carolina Business Opportunities publication or through a means of central electronic advertising as approved by the Office of General Services <u>Designated Board Officer</u> . Governmental bodies may charge vendors the cost incurred for copying and mailing bid or proposal documents requested in response to a procurement advertised in the "South Carolina Business Opportunities" publication.	RAISING SMALL PURCHASE THRESHOLDS: For overview, see Attachment "B" & "D"
(4) <u>The Division of Aeronautics of the Department of Commerce may act as its own purchasing agency for all procurements of maintenance services for aircraft and such procurements may be conducted pursuant to subparagraph (2)(b) above.</u>	Moved here from 11-35-1520(12)
SECTION 11-35-1560. Sole source procurement.	
(a) A contract may be awarded for a supply, service, <u>information technology</u> , or construction item without competition when, under regulations promulgated by the board, the chief procurement officer, the head of a purchasing agency, or a designee of either officer, above the level of the procurement officer, determines in writing that there is only one source for the required supply, service, or construction item.	TECHNICAL CHANGE: Change made to make sure code consistently applies uniformly to IT transactions.
(b) These regulations must include the requirements contained in this paragraph. Written documentation must include the determination and basis for the proposed sole source procurement. Any delegation of authority by either the chief procurement officer or the head of a governmental body with respect to sole source determinations must be submitted in writing to the materials management officer. In cases of reasonable doubt, competition must be solicited. Any decision by a governmental body that a procurement be restricted to one potential vendor must be accompanied by an explanation as to why no other will be suitable or acceptable to meet the need.	
(c) Any violation of these regulations by a purchasing agency shall, upon recommendation of the Office of General Services <u>Designated Board Office</u> with approval of the majority of the Budget and Control Board , result in the temporary suspension not to exceed one year of the violating agency's <u>governmental body's</u> ability to procure supplies, services, <u>information technology</u> , or construction items under this section.	TECHNICAL CHANGE: Change made to make sure code consistently applies uniformly to IT transactions.

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

SECTION 11-35-1575. Participation in auctions or bankruptcy sale.	
<p>A governmental body having knowledge of <u>either an auction or a sale of supplies from a bankruptcy estate</u> may elect to participate. The governmental body shall (a) survey the needed items being offered at auction to ascertain their condition and usefulness, (b) determine a fair market value for new like items through informal quotes, (c) determine the fair market value from similar items considering age and useful life, and (d) estimated repair cost and delivery cost, if any, of the desired items. Using this information, the governmental body shall determine the maximum price that it can pay for each item desired. At the <u>auction or sale</u>, the governmental body shall not exceed the maximum price so determined.</p>	<p>Based on feedback from the Audit staff, agencies are making purchases from bankruptcy estates, but using improper source selection methods - emergency or sole source. As none of the Code's source selection methods adequately meets this need, this change is recommended in order to allow agencies to participate in sales from a bankruptcy estate to the same extent they can participate in auctions.</p>
SECTION 11-35-1580. Information technology procurements.	
(1) Information Technology Management Office. The Designated Board Office Information Technology Management Office shall be responsible for:	TECHNICAL CHANGE: Change made to reflect Board restructuring.
(a) assessing the need for and use of information technology;	
(b) administering all procurement and contracting activities undertaken for governmental bodies involving information technology in accordance with this chapter;	
(c) providing for the disposal of all information technology property surplus to the needs of a using agency;	
(d) evaluating the use and management of information technology;	
(e) operating a comprehensive inventory and accounting reporting system for information technology;	
(f) developing policies and standards for the management of information technology in state government;	
(g) initiating a state plan for the management and use of information technology;	
(h) providing management and technical assistance to state agencies in using information technology; and	
(i) establishing a referral service for state agencies seeking technical assistance or information technology services.	
(2) Exemptions from the Requirements of this Section. The office may establish by regulation categories of procurement for information technology which shall be exempted from the requirements of this section.	
(3) Training and Certification. The office may establish a training and certification program in accordance with Section 11-35-1030.	
SECTION 11-35-1825. Pre-qualification of construction bidders and sub-bidders.	
<p>(a) The state engineer's office shall develop a procedure and a list of criteria for pre-qualifying construction bidders and sub-bidders. The criteria shall include, but not be limited to, prior performance, recent past references on all aspects of performance, financial stability, and experience on similar construction projects. A governmental body may use the prequalification process only for projects where the construction involved is unique in nature or over ten million dollars in value as determined by and subject to the approval of the state engineer's office. All prequalification projects shall be under the supervision of the state engineer's office, unless the project falls within the governmental body's procurement certification limits.</p>	<p>The OSE estimates that, measured by dollar value of work, at least 80% of the work performed on state construction projects is performed by subcontractors. The quality of their work is critical to the overall success of the construction and the long-term value of our buildings. The current process for defining qualifications for subcontractors is cumbersome and little used. Direct prequalification of subcontractors will ensure that all general contractors obtain quotes from a pool of quality subs.</p>

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

<p>(b) When the prequalification process is employed, only those bidders or subbidders who are prequalified through this procedure are entitled to submit a bid for the project. The determination of which bidders are prequalified, and thereby entitled to bid, is not protestable under Section 11-35-4210 or any other provision of this code.</p>	
<p>SECTION 11-35-2010. Types of contracts; contract forms; form not needed for smaller contracts.</p>	
<p>(1) Types of Contracts. Subject to the limitations of this section, any type of contract which will promote the best interests of the State may be used, except that the use of a cost-plus-a-percentage-of-cost contract shall be approved by the Office of General Services appropriate chief procurement officer. A cost-reimbursement contract, including a cost-plus-a-percentage-of-cost contract, shall be used only when a determination sufficient for external audit is prepared showing that such contract is likely to be less costly to the State than any other type or that it is impracticable to obtain the supplies, services, information technology, or construction required except under such a contract.</p>	<p>TECHNICAL CHANGE: Change made to make sure code consistently applies uniformly to IT transactions.</p>
<p>(2) Contract Forms. The board shall promulgate by regulation the form of the contracts to be used in connection with state purchasing and construction. The forms as shall be developed for Article 9 of this chapter shall be printed as a part of those regulations. A governmental body may enter into a contract or agreement without using the form promulgated pursuant to the board's regulation when the contract or agreement is for the rental of equipment valued at ten thousand dollars or less and the duration of the contract or agreement does not exceed ninety days.</p>	
<p>(2) Contracting Documents.</p> <p>— (a) As used in this section, the following definitions apply:</p> <p>— (i) "Contracting document" means a standardized or model instrument, or any component part thereof, for use as a contract, invitation for bids, request for proposals, request for qualifications, or instruction to bidders, including but not limited to a contract clause or solicitation provision.</p> <p>— (ii) "Usage instructions" means directions regarding (1) conditions for use of a contracting document, (2) completion of a contracting document, and (3) the process for obtaining permission, if possible, to omit or depart from the contracting document's established content for a particular solicitation or contract.</p> <p>— (b) The chief procurement officers may develop contracting documents for their respective areas of responsibility. Contracting documents may be published as internal operating procedures. Contracting documents may be accompanied by usage instructions.</p> <p>— (c) The Board may formally adopt a contracting document, as developed by the appropriate chief procurement officer, for mandatory use by all governmental bodies only after notice of the proposed adoption has been published in the State Register and the Board has provided the public at least thirty days to make written comments. If a contracting document is adopted by the Board, the contracting document shall be published in the State Register, accompanied by usage instructions, and used by all governmental</p>	

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

bodies in accordance with its usage instructions. The chief procurement officers are not required to submit for Board approval any contracting documents used in connection with either solicitations issued or contracts awarded by the Board or its offices.	
(d) Notwithstanding subparagraph (c) above, the Board may promulgate contracting documents as regulations.	
SECTION 11-35-2030. Multi-term contracts.	
(1) Specified Period. Unless otherwise provided by law, a contract for supplies, or services, or information technology shall not be entered into for any period of more than one year unless approved in a manner prescribed by regulation of the board; provided, that the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor.	TECHNICAL CHANGE: Change made to make sure code consistently applies uniformly to IT transactions.
(2) Determination Prior to Use. Prior to the utilization of a multi-term contract, it shall be determined in writing by the appropriate governmental body:	
(a) that estimated requirements cover the period of the contract and are reasonably firm and continuing;	
(b) that such a contract will serve the best interests of the State by encouraging effective competition or otherwise promoting economies in state procurement.	
(3) Cancellation Due to Unavailability of Funds in Succeeding Fiscal Periods. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled.	
(4) The maximum time for any multi-term contract is five years. Contract terms of up to seven years may be approved by the Director of the Office of General Services Designated Board Officer. Contracts exceeding seven years must be approved by the Budget and Control Board.	TECHNICAL CHANGE: Change made to reflect Board restructuring.
SECTION 11-35-2210. Right to inspect plant.	
The appropriate chief procurement officer, or his designee, Office of General Services shall be authorized, at reasonable times, to inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by the State.	TECHNICAL CHANGE: Change made to reflect Board restructuring.
SECTION 11-35-2410. Finality of determinations.	
The determinations required by Section 11-35-1520(7) (Competitive Sealed Bidding: Correction or Withdrawal of Bids; Cancellation of Awards), Section 11-35-1520(11) (Competitive Sealed Bidding: Request for Qualifications), Section 11-35-1525(1) (Competitive Fixed Price Bidding: Conditions for Use), Section 11-35-1528(1) (Competitive Best Value Bidding: Conditions for Use), Section 11-35-1528(8) (Competitive Best Value Bidding: Award), Section 11-35-1529(1) (Competitive Reverse Auction Bidding: Conditions for Use), Section 11-35-1530(1) (Competitive Sealed Proposals, Conditions for Use), Section 11-35-1530(4) (Competitive Sealed Proposals: Request for Qualifications), Section 11-35-1530(8)	<p>1. Some code sections were referenced by this section but did not actually require a "written determination." To clear up this disconnect, some of the referenced sections have been changed.</p> <p>11-35-1520(11) - added nonexistent "written determination" 11-35-1530(4) - added nonexistent "written determination"</p>

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

<p>(Competitive Sealed Proposals: Negotiations), Section 11-35-1530(79) (Competitive Sealed Proposals, Selection and Ranking of Prospective Offerors), Section 11-35-1530(940) (Competitive Sealed Proposals Award), Section 11-35-1540 (Negotiations After Unsuccessful Competitive Sealed Bidding), Section 11-35-1560 (Sole Source Procurement), Section 11-35-1570 (Emergency Procurement), Section 11-35-1710 (Cancellation of Invitation for Bids or Requests for Proposals), Section 11-35-1810(2) (Responsibility of Bidders and Offerors, Determination of Nonresponsibility), Section 11-35-1825 (Prequalification of Construction Bidders), Section 11-35-1830(3) (Cost or Pricing Data, Cost or Pricing Data Not Required), Section 11-35-2010 (Types and Forms of Contracts), Section 11-35-2020 (Approval of Accounting System), Section 11-35-2030(2) (Multi-Term Contracts, Determination Prior to Use), Section 11-35-3020(2)(d) (Construction Procurement Procedures: Negotiations After Unsuccessful Competitive Sealed Bidding), Section 11-35-3220(5) (Procurement Procedure, Selection and Ranking of the Five Most Qualified), and Section 11-35-4210(7) (Stay of Procurement During Protests, Decision to Proceed), and Section 11-35-4810 (Cooperative use of supplies, services or information technology), and any related regulations shall be final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law. The chief procurement officers or their designees shall review samples of such determinations periodically, and issue reports and recommendations on the appropriateness of the determinations made.</p>	<p>11-35-1530(8) - delete reference; 2410 not applicable 11-35-1530(9) - corrected reference from (9) to (7) 11-35-1530(10) - corrected reference from (10) to (9) 11-35-4810 - added</p> <p>2. Added reference to 11-35-1529. All determinations regarding which source selection method to use have been protected by the level of deference provided by 11-35-2410. This addition is in keeping with that change.</p> <p>3. Added reference to 11-35-1710. Pursuant to § 11-35-1710 and R.19-445.2070, the state can cancel solicitations prior to an intent to award. A written determination is required. This decision should receive the same protection (final, unless arbitrary....) that the determination to cancel an award under R.19-445.2085(C) receives.</p> <p>4. Added reference to 11-35-3020(2)(d). A similar level of deference is found in 11-35-1540, which 3020(2)(d) replaces.</p> <p>5. Added a reference to any regulations promulgated pursuant to the referenced clauses.</p>
<p>SECTION 11-35-2440. Records of procurement actions.</p>	
<p>(1) Contents of Records. Any governmental body as defined in Section 11-35-310(18) shall submit quarterly a record listing all contracts made under Section 11-35-1560 (Sole Source Procurement) or Section 11-35-1570 (Emergency Procurements) to the chief procurement officers. The record shall contain:</p>	
<p>(a) each contractor's name;</p>	
<p>(b) the amount and type of each contract;</p>	
<p>(c) a listing of supplies, services, <u>information technology</u>, or construction procured under each contract.</p>	<p>TECHNICAL CHANGE: Change made to make sure code consistently applies uniformly to IT transactions.</p>
<p>The chief procurement officers shall maintain these records for five years.</p>	
<p>(2) Publication of Records. A copy of the record shall be submitted to the board on an annual basis and shall be available for public inspection.</p>	
<p>SECTION 11-35-2710. Issuance of specifications; duties of the Board.</p>	
<p>The board shall promulgate regulations governing the preparation, maintenance, and content of specifications for supplies, services, <u>information technology</u>, and construction required by the State.</p>	<p>TECHNICAL CHANGE: Change made to make sure code consistently applies uniformly to IT transactions.</p>

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

<p>SECTION 11-35-2720. Duties of the chief procurement officers and the using agencies.</p>	
<p>The chief procurement officers mayshall prepare or review, issue, revise, and maintain the specifications for supplies, services, <u>information technology</u>, and construction required by the State, except for supplies, services, <u>information technology</u>, and construction items procured by the governmental bodies pursuant to Sections 11-35-1550, 11-35-1570, and 11-35-3230, the specification for which shall be prepared and maintained by the using agencies in accordance with the provisions of this article and regulations promulgated hereunder and monitored periodically by the chief procurement officers.</p>	<p>TECHNICAL CHANGE: Change made to make sure code consistently applies uniformly to IT transactions.</p>
<p>SECTION 11-35-3020. Construction procurement procedures.</p>	
<p>(1) Source Selection. All stateState construction contracts shall be awarded by competitive sealed bidding pursuant to shall be governed by the procedures set forth in Section 11-35-1520 subject to the exceptions enumerated in subsection (2) of this section. <u>State construction contracts may be awarded and except</u> as provided in Sections 11-35-1550, 11-35-1560, and 11-35-1570. Competitive sealed proposals as provided in Section 11-35-1530 and multi step sealed bidding as provided in Section 11-35-1520(11) shall not be used, except in such cases and in accordance with criteria as may be authorized and prescribed by regulation of the board.</p>	<p>REMOVE PREFERENCE FOR COMPETATIVE SEALED BIDS: Change eliminates need to justify in writing every use of a purchasing procedure other than awarding to the low bidder.</p>
<p>(2) Exceptions in Competitive Sealed Bidding Procedures. The process of competitive sealed bidding as required by subsection (1) of this section shall be performed in accordance with the procedures outlined in Article 5 of this code subject to the following exceptions:</p>	
<p>(a) Invitation for Bids. In lieu of Section 11-35-1520(2), Section 11-35-1520(3) and Section 11-35-1520(4), invitations for bids for each state construction project subject to subsection (1) of this section shall be made in the following manner. Each using agency shall be responsible for developing a formal invitation for bids for each state construction project subject to subsection (1) of this section. The invitation shall include, but not be limited to, all contractual terms and conditions applicable to the procurement. A copy of each invitation for bids shall be filed with the state engineer's office and shall be formally advertised in an official state government publication. The manner in which this official state government publication shall be published, the content of the publication itself, the frequency of the publication, the method of subscription to the publication, and the manner by which the publication will be distributed shall be established by regulation of the board.</p>	
<p>(b) Bid Acceptance. In lieu of Section 11-35-1520(67), the following provision applies. Bids must be accepted unconditionally without alteration or correction, except as otherwise authorized in this code. The using agency's invitation for bids shall set forth all requirements of the bid including, but not limited to:</p>	
<p>(i) The using agency, in consultation with the architect-engineer assigned to the project, shall identify by specialty in the invitation for bids all subcontractors, as defined by applicable documents of the American Institute of Architects, who are expected to perform work for the prime contractor to or about the construction when those subcontractors' contracts are each expected to exceed three percent of the prime contractor's total base bid. In addition, the using agency, in consultation with the architect-engineer</p>	<p>Reference to AIA document is unnecessary. The Procurement Code has a definition of "subcontractor".</p>

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

assigned to the project, may identify by specialty in the invitation for bids any subcontractors who are expected to perform work which is vital to the project. The determination of which subcontractors are included in the list provided in the invitation for bids is not protestable under Section 11-35-4210 or any other provision of this code. Any bidder in response to an invitation for bids shall set forth in his bid the name of only those subcontractors that will perform the work as identified in the invitation for bids. If the bidder determines to use his own employees to perform any portion of the work for which he would otherwise be required to list a subcontractor and if the bidder is qualified to perform such work under the terms of the invitation for bids, the bidder shall list himself in the appropriate place in his bid and not subcontract any of that work except with the approval of the using agency for good cause shown.	
(ii) Failure to complete the list provided in the invitation for bids renders the bidder's bid unresponsive.	
(iii) No prime contractor-bidder whose bid is accepted otherwise responsive and responsible shall substitute any person as subbiddersubcontractor in place of the subbiddersubcontractor listed in the original bid, except for one or more of the following reasons:	This change clarifies WHEN certain currently allowed reasons for substitution can be used, and creates an opportunity for cure.
(a) upon a showing satisfactory to the using agency by the contractor-bidder that a listed subbidderecontractor who was listed is not financially responsible;	Subbidder substituted for subcontractor
(b) upon a showing satisfactory to the using agency by the contractor-bidder that the scope of work bid by a listed subbidderecontractor did not include a portion of the work required in the plans and specifications, and the exclusion is not clearly set forth in the listed subcontractor's original bid;	Subbidder substituted for subcontractor
(c) upon a showing satisfactory to the using agency made by the contractor bidder within four working days of the bid opening that the subbidderecontractor was listed as a result of an inadvertent clerical error;	Subbidder substituted for subcontractor
(d) upon a showing satisfactory to the using agency by the bidder that the listed subbidder is required to be licensed under Title 40 and did not have the required license at the time of bid submission. The request for substitution must be made to the using agency in writing. This written request does not give rise to any private right of action against the bidder in the absence of actual malice.	2-4% of construction bids are protested over issues related to subcontractor listing. This change will: 1. Allow agencies to salvage otherwise good low bids. 2. Allow agencies to avoid the cost and time impact of resolicitation. Reduce bid shopping by allowing more specialty trades to be listed without risk of non-responsiveness.
(iv) No contractor whose bid is accepted shall substitute any person as a subcontractor in place of a subcontractor listed in the original bid, except for one or more of the following reasons:	This change clarifies WHEN certain currently allowed reasons for substitution can be used.
(ad) upon a showing satisfactory to the using agency by the contractor that the listed subcontractor failed or refused to submit a performance and payment bond when requested by the prime contractor after the subcontractor had represented to the prime contractor that he could obtain a performance and payment bond;	
(e) upon a showing satisfactory to the using agency by the contractor that the listed subcontractor is required to be licensed and does not have the license by the time it is required by law;	
(bf) when the listed subcontractor fails or refuses to perform his subcontract;	
(cg) when the work of the listed subcontractor is found by the using agency to be substantially unsatisfactory;	
(dh) upon mutual agreement of the contractor and subcontractor;	
(ei) with the consent of the using agency for good cause shown.	

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

The request for substitution must be made to the using agency in writing. This written request does not give rise to any private right of action against the prime contractor in the absence of actual malice.	
(iv) Where substitution is allowed, the bidder or prime contractor, before obtaining prices from any other subcontractor, must attempt in good faith to negotiate a subcontract with at least one subcontractor whose bid was received prior to the submission of the prime contractor's original bid. Nothing in this section affects a contractor's ability to request withdrawal of a bid in accordance with the provisions of this code and the regulations promulgated under it.	
(vi) The using agency shall send all responsive bidders a copy of the bid tabulation within ten working days following the bid opening.	
(c) In lieu of Section 11-35-1520(10) the following provisions apply. Unless there is a compelling reason to reject bids as prescribed by regulation of the board, notice of an intended award of a contract to the lowest responsive and responsible bidder whose bid meets the requirements set forth in the invitation for bids shall be given by posting such notice at a location which has been specified in the invitation for bids. The invitation for bids and the posted notice must contain a statement of the bidder's right to protest under Section 11-35-4210(1) and the date and location of posting must be announced at bid opening. In addition to posting notice as provided above, the using agency shall promptly send all responsive bidders a copy of the notice of intended award and of the bid tabulation. Such mailed notice must indicate the posting date and must contain a statement of the bidder's right to protest under Section 11-35-4210(1).	
On the eleventh day Sixteen days after notice is given, the using agency may enter into a contract with the bidder named in the notice in accordance with the provisions of this code and of the bid solicited. <u>The procurement officer must comply with Section 11-35-1810 before making an award.</u> A determination of responsibility must be made before award in accordance with Section 11-35-1810.	<p>STREAMLINE PROCUREMENTS BY 5 DAYS: For overview, see Attachment "D"</p> <p>This change, combined with the companion change to the A/E award process, will save a collective 9-10 years of waiting time.</p> <p>Second Change: Eliminates need for a "determination" when the vendor is found responsible. Section 11-35-1810 only requires a determination when a vendor is found non-responsible.</p>
If, at bid opening, only one bid is received and determined to be responsive and responsible and within the agency's construction budget, award may be made without the ten sixteen-day waiting period.	STREAMLINE PROCUREMENTS BY 5 DAYS: For overview, see Attachment "D"
(d) Negotiations After Unsuccessful Competitive Sealed Bidding. In lieu of Section 11-35-1540, the following provisions apply:	
(1) When bids received pursuant to an invitation for bids exceed available funds and it is determined in writing by the agency that circumstances will not permit the delay required to resolicit competitive sealed bids, a contract may be negotiated pursuant to this section with the lowest responsible and responsive bidder, provided that this base bid, less any deductive alternates, does not exceed available funds by an amount greater than five ten percent of the construction budget established for that portion of the work. The using agency may change the scope of the work to reduce the cost to be within the established construction budget but shall not reduce the cost below the established construction budget more than ten percent without a written request by the agency and the written approval of the chief procurement officer based on the best interest of the State.	This change will give agencies more flexibility in negotiating price reductions when bids exceed the budget and avoid the time and expense of resolicitation.
(2) When the lowest base bid received pursuant to an invitation for bids	TECHNICAL CHANGE: In consultation

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

exceeds approved available funds and the using agency is able to identify additional funds for the project, as certified by the appropriate fiscal officers, in the amount of the difference between the lowest base bid and the approved available funds for the project, the using agency shall submit its request to use such additional funds to the board and the Joint Bond Review Committee in accordance with Sections 3A and 3B of Act 761 of 1976 which were added pursuant to Sections 2-47-40 and 2-47-50.	with Carol Routh, the references to these acts are unnecessary. Removed to avoid confusion. Change made to both 11-35-3060 & 11-35-3020(1)(d)(2).
SECTION 11-35-3030. Bond and security.	
(1) Bid Security. (a) Requirement for Bid Security. Bid security is required for all competitive sealed bidding for construction contracts in excess of one hundred fifty thousand dollars and such other contracts as may be prescribed by the state engineer's office. Bid security is a bond provided by a surety company meeting the criteria established by the regulations of the board or otherwise supplied in a form which may be established by regulation of the board.	Change helps to dovetail Title 29, Chapter 6 and the procurement code. Title 29, Chapter 6 was enacted after this provision of the code and applies more broadly than the code.
(b) Amount of Bid Security. Bid security shall be in an amount equal to at least five percent of the amount of the bid at a minimum.	
(c) Rejection of Bids for Noncompliance with Bid Security Requirements. When the invitation for bids requires security, noncompliance requires that the bid be rejected except that a bidder who fails to provide bid security in the proper amount or a bid bond with the proper rating shall be given one working day from bid opening to cure such deficiencies. If the bidder cannot cure these deficiencies within one working day of bid opening, his bid shall be rejected.	
(d) Withdrawal of Bids. After the bids are opened, they shall be irrevocable for the period specified in the invitation for bids. If a bidder is permitted to withdraw its bid before bid opening pursuant to Section 11-35-1520(8) no action shall be had against the bidder or the bid security.	
(2) Contract Performance Payment Bonds. (a) When Required-Amounts. When a construction contract is awarded pursuant to Section 11-35-3020, the following bonds or security shall be delivered to the using agency and shall become binding on the parties upon the execution of the contract:	
(i) a performance bond satisfactory to the State, executed by a surety company meeting the criteria established by the board in regulations, or otherwise secured in a manner satisfactory to the State, in an amount equal to one hundred percent of the price specified in the contract;	
(ii) a payment bond satisfactory to the State, executed by a surety company meeting the criteria established by the board in regulations, or otherwise secured in a manner satisfactory to the State, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to one hundred percent of the contract price.	
(iii) in the case of a construction contract valued at one hundred fifty thousand dollars or less, the using agency may waive the requirements of (i) and (ii) above, provided that the using agency has protected the State.	Changed to dovetail with enactment of Section 29-6-250(1), which states: "When a governmental body is a party to a contract to improve real property, and the contract is for a sum in excess of fifty thousand dollars, the owner of the property shall require the contractor to provide a labor and material payment bond in the full amount of the contract."
(b) Authority to Require Additional Bonds. Nothing in subsection (2) of this section shall be construed to limit the authority of the board to require a	

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

<p>performance bond or other security in addition to these bonds, or in circumstances other than specified in item (a) of such subsection in accordance with regulations promulgated by the board.</p>	
<p>(c) Suits on Payment Bonds--Right to Institute. Every person who has furnished labor, material, or rental equipment to a bonded contractor or his subcontractors for the work specified in the contract, and who has not been paid in full therefor before the expiration of a period of ninety days after the day on which the last of the labor was done or performed by such person or material or rental equipment was furnished or supplied by such person for which such claim is made, shall have the right to sue on the payment bond for the amount, or the balance thereof, unpaid at the time of institution of such suit and to prosecute such action for the sum or sums justly due such person. A remote claimant shall have a right of action on the payment bond only upon giving written notice to the contractor within ninety days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material or rental equipment upon which such claim is made, stating with substantial accuracy the amount claimed as unpaid and the name of the party to whom the material or rental equipment was furnished or supplied or for whom the labor was done or performed. Such written notice to the bonded contractor shall be personally served or served by mailing the same by registered or certified mail, postage prepaid, in an envelope addressed to the bonded contractor at any place the bonded contractor maintains a permanent office for the conduct of its business, or at the current address as shown on the records of the Department of Labor, Licensing and Regulation. However, in no event shall the aggregate amount of any claim against such payment bond by a remote claimant exceed the amount due by the bonded contractor to the person to whom the remote claimant has supplied labor, materials, rental equipment, or services, unless the remote claimant has provided notice of furnishing labor, materials, or rental equipment to the bonded contractor. Such written notice to the bonded contractor shall be personally served or sent by fax or sent by electronic mail or sent by registered or certified mail, postage prepaid, to the bonded contractor at any place the bonded contractor maintains a permanent office for the conduct of its business, or at the current address as shown on the records of the Department of Labor, Licensing and Regulation. After receiving the notice of furnishing labor, materials, or rental equipment, no payment by the bonded contractor shall lessen the amount recoverable by the remote claimant. However, in no event shall the aggregate amount of claims on the payment bond exceed the penal sum of the bond.</p> <p>No suit under this section shall be commenced after the expiration of one year after the last date of furnishing or providing labor, services, materials, or rental equipment.</p> <p>For purposes of this section, "bonded contractor" means the contractor or subcontractor furnishing the payment bond, and "remote claimant" means a person having a direct contractual relationship with a subcontractor of a bonded contractor, but no contractual relationship expressed or implied with the bonded contractor.</p>	
<p>(d) Suits on Payment Bonds--Where and When Brought. Every suit instituted upon a payment bond shall be brought in a court of competent jurisdiction for the county or circuit in which the construction contract was to be performed, but no such suit shall be commenced after the expiration of one year after the day on which the last of the labor was performed or material was supplied by the person bringing suit. The obligee named in the bond need not be joined as a party in any such suit.</p>	
<p>(3) Bonds Forms and Copies. (a) Bond Forms. The board shall promulgate</p>	

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

by regulation the form of the bonds required by this section.	
(b) Certified Copies of Bonds. Any person may request and obtain from the using agency a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution, and delivery of the original.	
(4) Retention. (a) Maximum amount to be withheld. In any contract or subcontract for construction which contract or subcontract provides for progress payments in installments based upon an estimated percentage of completion, with a percentage of the contract's proceeds to be retained by the State or general contractor pending completion of the contract or subcontract, the retained amount of each progress payment or installment shall be no more than five percent.	
(b) Release of Retained Funds. When the work to be performed on a state construction project or pursuant to a state construction contract is to be performed by multiple prime contractors or by a prime contractor and multiple subcontractors, the work contracted to be done by each individual contractor or subcontractor will be considered a separate division of the contract for the purpose of retention. As each such division of the contract is certified as having been completed, that portion of the retained funds which is allocable to the completed division of the contract shall be released forthwith to the prime contractor, who shall, within ten days of its receipt, release to the subcontractor responsible for the completed work the full amount of any retention previously withheld from him by the prime contractor.	
(5) Bonds for Bid Security and Contract Performance. The requirement of a bond for bid security on a construction contract, pursuant to subsection (1), and a construction contract performance bond, pursuant to subsection (2), may not include a requirement that the surety bond be furnished by a particular surety company or through a particular agent or broker.	
SECTION 11-35-3040. Contract clauses and their administration.	
(1) Contract Clauses. State construction contracts and subcontracts promulgated by regulation pursuant to Section 11-35-2010(2) may include clauses providing for adjustments in prices, time of performance and other appropriate contract provisions including, but not limited to:	Change expressly allows use of the listed types of provisions, even if the contracts have not been promulgated.
(a) the unilateral right of a governmental body to order in writing:	
(i) all changes in the work within the scope of the contract, and	
(ii) all changes in the time of performance of the contract that do not alter the scope of the contract work;	
(b) variations occurring between estimated quantities of work in the contract and actual quantities;	
(c) suspension of work ordered by the governmental body;	
(d) site conditions differing from those indicated in the contract or ordinarily encountered, except that differing site condition clauses promulgated by the board need not be included in a contract:	Change required to reflect added flexibility provided by changes to 11-35-2010.
(i) when the contract is negotiated; or	
(ii) when the parties have otherwise agreed with respect to the risk of differing site conditions.	
(2) Price Adjustments. (a) Adjustments in price pursuant to clauses adopted or promulgated under Section 11-35-2010 subsection (1) of this section shall be computed and documented with a written determination. The price adjustment agreed upon shall approximate the actual cost to the contractor and all costs incurred by the contractor shall be justifiably compared with prevailing industry standards, including reasonable profit. Costs shall be	Change reflects changes to 11-35-2010.

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

properly itemized and supported by substantiating data sufficient to permit evaluation before commencement of the pertinent performance or as soon thereafter as practicable, and shall be arrived at through whichever one of the following ways is the most valid approximation of the actual cost to the contractor:	
(i) by unit prices specified in the contract or subsequently agreed upon;	
(ii) by the costs attributable to the events or situations under such clauses with adjustment of profits or fee, all as specified in the contract or subsequently agreed upon;	
(iii) by agreement on a fixed price adjustment;	
(iv) in such other manner as the contracting parties may mutually agree; or	
(v) in the absence of agreement by the parties, through unilateral determination by the governmental body of the costs attributable to the events or situations under such clauses, with adjustment of profit or fee, all as computed by the governmental body in accordance with applicable sections of the regulations issued under this chapter and subject to the provisions of Article 17 of this chapter.	
(b) A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of Section 11-35-1830.	
(3) Additional Contract Clauses. The construction contracts and subcontracts promulgated pursuant to Section 11-35-2010(2) may include clauses providing for appropriate remedies which cover as a minimum:	Change expressly allows use of the listed types of provisions, even if the contracts have not been promulgated.
(a) specified excuses for delay or nonperformance;	
(b) termination of the contract for default;	
(c) termination of the contract in whole or in part for the convenience of the governmental body.	
(4) Modification of Required Clauses. The chief procurement officer may vary <u>any</u> the clauses promulgated by the board under subsection (1) and subsection (3) of this section for inclusion in any particular construction contract; provided, that any variations are supported by a written determination that states the circumstances justifying such variations; and provided, further, that notice of any such material variation be stated in the invitation for bids.	TECHNICAL CHANGE: Change conforms code to long-standing practice.
SECTION 11-35-3060. Fiscal responsibility.	
Every contract modification, change order, or contract price adjustment under a construction contract with the State shall be subject to the procedures outlined in Sections 3A and 3B of Act 761 of 1976 which were added pursuant to Sections 2-47-40 and 2-47-50.	TECHNICAL CHANGE: In consultation with Carol Routh, the references to these acts are unnecessary. Removed to avoid confusion. Change made to both 11-35-3060 & 11-35-3020(1)(d)(2).
SECTION 11-35-3220. Procurement procedures.	
(1) Agency Selection Committee. Each using agency shall establish its own architect-engineer, construction management, and land surveying services selection committee hereinafter referred to as the agency selection committee, which shall be composed of those individuals whom the agency head determines to be qualified to make an informed decision as to the most competent and qualified firm for the proposed project. The head of the using agency or his qualified responsible designee shall sit as a permanent member of the agency selection committee for the purpose of coordinating and	

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

accounting for the committee's work. To assist an agency selection committee in the selection of firms to be employed for significant or highly technical projects and to facilitate prompt selections, the agency selection committee may invite the state engineer or his designee to sit as a nonvoting member of the committee.	
(2) Advertisement of Project Description. The agency selection committee shall be responsible for:	
(a) developing a description of the proposed project,	
(b) enumerating all required professional services for that project, and	
(c) preparing a formal invitation to firms for submission of information.	
The invitation shall include, but not be limited to, the project title, the general scope of work, a description of all professional services required for that project, the submission deadline, and how interested firms may apply for consideration. The agency selection committee shall file a copy of the project description and the invitation with the state engineer's office. The invitation shall be formally advertised in an official state government publication. The manner in which this official state government publication shall be published, the content of the publication itself, the frequency of the publication, the method for subscription to the publication, and the manner by which the publication will be distributed shall be established by regulation of the board.	
(3) Response to Invitation. The date for submission of information from interested persons or firms in response to an invitation shall be not less than fifteen days after publication of the invitation. Interested architect-engineer, construction management, and land surveying persons or firms shall be required to respond to the invitation with the submission of a current and accurate Federal Standard Form 254, Architect Engineer and Related Services Questionnaire, and Federal Standard Form 255, Architect Engineer and Related Services Questionnaire for Specific Project, or such similar information as the board may prescribe by regulation <u>information demonstrating the person or firm's competence and qualifications for the services required, and any other information which the particular invitation may require. Such information shall be submitted using forms as developed by the Office of State Engineer.</u>	The federal government is in the process of eliminating the two forms. By creating our own versions we can tailor the forms to solicit the information required by the Code in a format that will facilitate effective review of responsive submissions.
(4) Interviews with Interested Firms. Following receipt of information from all interested persons and firms, the agency selection committee shall hold interviews with at least three <u>five</u> persons or firms who have responded to the committee's advertisement and who are deemed most qualified on the basis of information available prior to the interviews. A list of firms selected for interview shall be sent to all firms that submitted information in response to the advertisement, prior to the date selected for the interviews. If less than three <u>five</u> persons or firms have responded to the advertisement, the committee shall hold interviews with those that did respond. The agency selection committee's determination as to which will be interviewed shall be in writing and shall be based upon its review and evaluation of all submitted materials. The written report of the committee shall specifically list the names of all persons and firms that responded to the advertisement and enumerate the reasons of the committee for selecting those to be interviewed. The purpose of the interviews shall be to provide such further information as may be required by the agency selection committee to fully acquaint itself with the relative qualifications of the several interested firms.	OSE estimates that 90% of design contracts are valued at less than \$75,000. Interviewing 5 firms for relatively small contracts is wasteful of state and private resources.
(5) Selection and Ranking of the Three <u>Five</u> Most Qualified. The agency selection committee shall evaluate each of the persons or firms interviewed in view of their:	
(a) past performance;	
(b) the ability of professional personnel;	

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

(c) demonstrated ability to meet time and budget requirements;	
(d) <u>location and knowledge of the locality of the project, provided that application of the criteria leaves an appropriate number of qualified firms, given the nature and size of the project;</u>	This change expands the "location" criterion to include not only the physical location of the firm, but also its knowledge of the project location.
(e) recent, current, and projected workloads of the firms;	
(f) creativity and insight related to the project; and	
(g) related experience on similar projects;	
(h) <u>volume of work awarded by the using agency to the person or firm during the previous five years with the object of effectuating an equitable distribution of contracts among qualified firms including Minority Business Enterprises certified by the South Carolina Office of Small and Minority Business Assistance and firms that have not had prior state work; and,</u>	This change allows agencies to explicitly apply a "volume of work" and SMBE criteria to promote greater diversity in selection.
(i) <u>any other special qualification required under the solicitation by the using agency.</u>	This allows an agency to explicitly define project-specific qualification requirements to ensure that truly qualified firms respond. Under current law these special requirements must be contorted into one of the statutory criteria.
Based upon these evaluations, the agency selection committee shall select the three five persons or firms which, in its judgment, are the best qualified, ranking the three five in priority order. The agency selection committee's report ranking the three five chosen persons or firms shall be in writing and shall include data substantiating its determinations.	
(6) Notice of Selection and Ranking. When it is determined by the agency that the ranking report is final, written notification of the <u>highest ranked person or firm</u> election immediately shall be sent <u>immediately</u> to all firms interviewed.	
(7) Negotiation of Contract. The governing body of the using agency or its designee shall negotiate a contract for services with the most qualified person or firm at a compensation which is fair and reasonable to the State. Should the governing body of the using agency or its designee be unable to negotiate a satisfactory contract with this person or firm, negotiations shall be formally terminated. Negotiations shall commence in the same manner with the second and then the third, fourth and fifth most qualified until a satisfactory contract has been negotiated. If no agreement is reached with one of the three five, additional persons or firms in order of their competence and qualifications shall be selected after consultation with the agency selection committee, and negotiations shall be continued in the same manner until agreement is reached.	
(8) State Engineer's Office Review. The head of the using agency shall submit the following documents to the state engineer's office for its review:	
(a) the written report of the agency selection committee, listing the persons or firms that responded to the invitation to submit information and enumerating the reasons of the committee for selecting the particular ones to be interviewed;	
(b) the written ranking report of the agency selection committee and all data substantiating the determinations made in that report;	
(c) the tentative contract between the using agency and the selected person or firm.	
(9) Approval or Disagreement by State Engineer's Office. The state engineer's office shall have ten days to review the data submitted by the agency selection committee, to determine the volume of work previously awarded to the firm by the State, with the object of effecting an equitable distribution of contracts among qualified firms, and to determine its position	This change reflects the transfer of responsibility for this "share the wealth" review to the agencies actually making the selection.

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

with respect to the particular person or firm recommended for approval by the agency. If the state engineer's office disagrees with the proposal, it may contest the proposal by submitting the matter to the board for decision. In the event of approval, the state engineer's office shall immediately notify in writing the using agency and the person or firm selected of the award and thereby authorize the using agency to execute a contract with the selected person or firm. In the event of disagreement, the state engineer's office shall immediately notify the using agency in writing of its intention to contest the ranking and the reasons therefor. All contract negotiations by the governing body shall be suspended pending a decision by the board concerning a contested ranking. The board shall hear any such contests at its next regularly scheduled meeting subsequent to notification of the using agency. If the board rules in support of the state engineer's office position, the using agency shall submit the name of another person or firm to the state engineer's office for consideration, selected in accordance with the procedures prescribed herein. If the board rules in support of the using agency, the using agency shall be notified in writing and thereby authorized to execute a contract with the selected person or firm.	
SECTION 11-35-3230. Exception for small architect-engineer and land surveying services contract.	
(1) Procurement Procedures for Certain Contracts. All governmental bodies securing architect-engineer or land surveying service which is estimated not to exceed twenty-five thousand dollars may employ the architects, engineers, or land surveyors award contracts by direct negotiation and selection, taking into account:	TECHNICAL CHANGE: The state contracts with design professionals as independent contractors; the state does not "employ" these design professionals.
(a) the nature of the project,	
(b) the proximity of the architect-engineer or land surveying services to the project,	
(c) the capability of the architect, engineer, or land surveyor to produce the required service within a reasonable time,	
(d) past performance, and	
(e) ability to meet project budget requirements.	
(2) Maximum Fees Payable to One Person or Firm. Fees paid during the twenty-four month period immediately preceding negotiation of the contract by any single governmental body for professional services performed by any one architectural-engineering or land surveying firm pursuant to Section 11-35-3230(1) shall not exceed seventy-five thousand dollars. All persons or firms seeking to render professional services pursuant to this section shall furnish the governmental body with whom the firm is negotiating a list of professional services, including fees paid therefor, performed for the governmental body during the fiscal year immediately preceding the fiscal year in which the negotiations are occurring and during the fiscal year in which the negotiations are occurring.	
(3) Approval-Submission of Contracts by to State Engineer's Office. Copies of all contracts, including the negotiated scope of services and fees, awarded pursuant to this section shall be submitted for approval to the state engineer's office for information in accordance with regulations to be established by the board prior to the awarding and execution of the contracts.	This change eliminates the requirement for OSE review and approval of ~80% of design services contracts.
(34) Splitting of Larger Projects Prohibited. No using agency may break a project into small projects for the purpose of circumventing the provisions of Section 11-35-3220 and this section.	

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

SECTION 11-35-3240. Manual for planning and execution of state permanent improvements.	
<p>As relates to this code and the ensuing regulations, a "Manual for Planning and Execution of State Permanent Improvements" may<u>shall</u> be published by the board or its designee for use by governmental bodies and included, <u>by reference</u>, in the regulations of the board. The manual may be revised as the board deems necessary.</p>	<p>The first change is made to reflect the Court's decision in <u>Edisto Aquaculture Corporation v. South Carolina Wildlife and Marine Resources Department</u>, 311 S.C. 37, 427 S.E.2d 753 (1993). In the <u>Edisto</u> case, the court found that a statute that does not require regulations but authorizes their promulgation gives the agency greater discretion regarding what to promulgate and what not to promulgate as a regulation.</p> <p>The second change expressly allows the Board to promulgate the Manual without actually reprinting the entire document in the State Register. Addresses the argument that the phrase "included in the regulations of the board" eliminates the ability to publish the manual by reference.</p>
SECTION 11-35-3245. Architect, engineer, or construction manager; performance of other work.	
<p>(a) No architect or engineer performing design work, or construction manager performing construction management services as described in Section 11-35-2910(3), pursuant to a contract awarded under <u>the provisions of Section 11-35-3220 or Section 11-35-3230</u>any provision of this chapter may, <u>by subsequent amendment or separate contract award</u>, perform other work on that project as a contractor or subcontractor either directly or through a business in which he or his architectural engineering or construction management firm has greater than a five percent interest.</p> <p>(b) For purposes of this section, safety compliance and other incidental construction support activities performed by the construction manager are not considered work performed as a contractor or subcontractor. Should the construction manager perform or be responsible for safety compliance and other incidental construction support activities, and these support activities are in noncompliance with the provisions of Section 41-15-210, then the construction management firm is subject to all applicable fines and penalties.</p>	<p>This change will remove any possible objection to the State's ability to enter into design-build contracts, while retaining the prohibition against "follow-on" contracting using a real or de facto sole source process.</p>
SECTION 11-35-3310. Indefinite delivery contracts for construction items, architectural-engineering and land surveying services.	
<p>(1) General Applicability. Indefinite delivery contracts may be awarded on an as-needed basis for construction services pursuant to the procedures set forth in Section 11-35-3020 and for architectural-engineering and land surveying services pursuant to Section 11-35-3220.</p>	<p>The intent is to allow design and construction IDCs a duration equal to SPO/ITMO multi-term contracts.</p> <p>Extending the duration will save OSE and agencies, collectively, 10-20 man-years annually in administrative time for managing the resolicitation process.</p>

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

<p>(a) Construction Services. When construction services contracts are awarded, each contract shall be limited to a total expenditure of seven-three million <u>seven hundred fifty thousand</u> dollars for a two-five <u>year</u> period with individual project expenditures not to exceed one-three hundred fifty <u>thousand</u> dollars.</p>	<p>Doubling the "per project" limit to \$300K will permit at least 50% of state construction projects to be performed by IDC contractors. This allow awards to be made in less than 1 week versus 2 months for the typical bid letting. Current "per project" and "total contract" limits equal 5 projects in two years (2.5/year). The proposed changes equal 12.5 projects in 5 years (2.5/year).</p>
<p>(b) Architectural-Engineering and Land Surveying Services. When architectural-engineering and land surveying services contracts are awarded, each contract shall be limited to a total expenditure of threeone million seven <u>hundred fifty thousand</u> dollars for a two-five <u>year</u> period with individual project expenditures not to exceed one hundred thousand dollars.</p>	<p>Agencies currently complain that they routinely exceed the "total contract" limit or the time limit, but rarely both. Current "per project" and "total contract" limits equal 3 projects in two years (1.5/year). The proposed changes equal 12.5 projects in 5 years (2.5/year).</p>
<p>(2) Small Indefinite Delivery Contracts. Small indefinite delivery contracts for architectural-engineering and land surveying services may be procured as provided in Section 11-35-3230. A contract established under this section shall be subject to and included in the limitations for individual and total contract amounts provided in Section 11-35-3230, and any regulations promulgated thereunder.</p>	
<p>SECTION 11-35-3410. Contract clauses and their administration.</p>	
<p>(1) Contract Clauses. The board may promulgate regulations requiring the inclusion in state supplies, and services, and information technology contracts of clauses providing for adjustments in prices, time of performance or other contract provisions, as appropriate, and covering the following subjects:</p>	<p>TECHNICAL CHANGE: Change made to make sure code consistently applies uniformly to IT transactions.</p>
<p>(a) the unilateral right of a governmental body to order in writing changes in the work within the scope of the contract and temporary stopping of the work or delaying performance;</p>	
<p>(b) variations occurring between estimated quantities of work in a contract and actual quantities.</p>	
<p>(2)(a) Price Adjustments. Adjustments in price pursuant to clauses promulgated under subsection (1) of this section shall be computed and documented with a written determination. The price adjustment agreed upon shall approximate the actual cost to the contractor, and all costs incurred by the contractor shall be justifiable compared with prevailing industry standards, including a reasonable profit. Costs shall be properly itemized and supported by substantiating data sufficient to permit evaluation before commencement of the pertinent performance or as soon thereafter as practicable, and shall be arrived at through whichever one of the following ways is the most valid approximation of the actual cost to the contractor:</p>	
<p>(i) by unit prices specified in the contract or subsequently agreed upon;</p>	
<p>(ii) by the costs attributable to the events or situations under such clauses with adjustment for profit or fee, all specified in the contract or subsequently agreed upon;</p>	
<p>(iii) by agreement on a fixed price adjustment;</p>	
<p>(iv) by rates determined by the Public Service Commission and set forth in the applicable tariffs;</p>	
<p>(v) in such other manner as the contracting parties may mutually agree; or</p>	
<p>(vi) in the absence of agreement by the parties, through unilateral determination by the governmental body of the costs attributable to the events</p>	

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

or situations under such clauses, with adjustment of profit or fee, all as computed by the governmental body in accordance with applicable sections of the regulations issued under Article 13 of this chapter and subject to the provisions of Article 17 of this chapter.	
(b) A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of Section 11-35-1830.	
(3) Additional Contract Clauses. The board shall be authorized to promulgate regulations requiring the inclusion in state supplies, and services, and <u>information technology</u> contracts of clauses providing for appropriate remedies and covering the following subjects:	TECHNICAL CHANGE: Change made to make sure code consistently applies uniformly to IT transactions.
(a) specified excuses for delay or nonperformance;	
(b) termination of the contract for default;	
(c) termination of the contract in whole or in part for the convenience of the governmental body.	
(4) Modification of Clauses. The chief procurement officer may vary the clauses promulgated by the board under subsection (1) and subsection (3) of this section for inclusion in any particular state contract; provided, that any variations are supported by a written determination that states the circumstances justifying such variations; and provided, further, that notice of any such material variations shall be stated in the invitation for bids or request for proposals.	
SECTION 11-35-3510. Cost principles required for supplies and services, and <u>information technology</u> contracts.	TECHNICAL CHANGE: Change made to make sure code consistently applies uniformly to IT transactions.
The board may promulgate regulations setting forth cost principles which shall be used to determine the allowability of incurred costs for the purpose of reimbursing costs under provisions in supplies, and services, and <u>information technology</u> contracts which provide for the reimbursement of costs.	TECHNICAL CHANGE: Change made to make sure code consistently applies uniformly to IT transactions.
SECTION 11-35-3820. Allocation of proceeds for sale or disposal of surplus supplies.	
Except as provided in Section 11-35-1580 and Section 11-35-3830 and the regulations pursuant thereto, the sale of all state-owned supplies, property, or personal property not in actual public use shall be conducted and directed by the Office of General Services <u>Designated Board Office</u> . Such sales shall be held at such places and in such manner as in the judgment of the Office of General Services <u>Designated Board Office</u> shall be most advantageous to the State. Unless otherwise determined, sales shall be by either public auction or competitive sealed bid to the highest bidder. Each governmental body shall inventory and report to the Office of General Services <u>Designated Board Office</u> all surplus personal property not in actual public use held by that governmental body <u>agency</u> for sale. The Office of General Services <u>Designated Board Office</u> shall deposit the proceeds from such sales, less expense of the sales, in the state general fund or as otherwise directed by regulation. This policy and procedure shall apply to all governmental bodies unless exempt by law.	TECHNICAL CHANGE: Change made to reflect Board restructuring.
SECTION 11-35-3830. Trade-in sales.	
(1) Trade-in Value. Unless otherwise provided by law, governmental bodies may trade-in personal property, the trade-in value of which may be applied to	

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

the procurement or lease of like items. The trade-in value of such personal property shall not exceed an amount as specified in regulations promulgated by the board.	
(2) Approval of Trade-in Sales. When the trade-in value of personal property of a governmental body exceeds the specified amount, the board shall have the authority to determine whether:	
(a) the subject personal property shall be traded in and the value applied to the purchase of new like items; or	
(b) the property shall be classified as surplus and sold in accordance with the provisions of Section 11-35-3820. The board's determination shall be in writing and be subject to the provisions of this chapter.	
(3) Record of Trade-in Sales. Governmental bodies shall submit quarterly to the materials management officer a record listing all trade-in sales made under subsections (1) and (2) of this section.	
SECTION 11-35-3840. Office of General Services authorized Authorization to license for public sale certain publications and materials; disposition of proceeds.	TECHNICAL CHANGE: Change made to reflect Board restructuring.
The Office of General Services of the State Budget and Control Board may license for public sale publications and materials pertaining to training programs and information technology products which are developed during the normal course of the Board Office's activities. Such items shall be licensed at such reasonable costs as are established in accordance with the cost of the items. All proceeds from the sale of such the publications, and materials, and information technology products shall be placed in a revenue account and expended for the cost of providing such services.	TECHNICAL CHANGE: Change made to reflect Board restructuring.
SUBARTICLE 5.	TECHNICAL CHANGE: This provision of the Code has, to the knowledge of the staff, never been used.
CONTINUATION OF CURRENT PROVISIONS OF LAW	
SECTION 11-35-4010. Continuation of current provisions of law.	
Nothing contained in this article shall affect or limit the legal right and authority which any principal referred to in this article may have by law to act for itself in any matter coming within the purview of this article.	
SECTION 11-35-3850 4020. Sale of unserviceable materials and equipment.	
Governmental bodies approved by the board may sell any supplies owned by it after such supplies have become entirely unserviceable and can properly be classified as "junk", in accordance with procedures established by the Office of General Services Designated Board Office. All sales of unserviceable supplies by the governmental body shall be made in public to the highest bidder, after advertising for fifteen days, and the funds from such sales shall be credited to the account of the governmental body owning and disposing of such unserviceable supplies.	TECHNICAL CHANGE: Change made to reflect Board restructuring.
SECTION 11-35-4210. Right to protest; procedure; settlement of protest; administrative review and decision; notice of decision; finality; stay of procurement pending; exclusivity of remedy.	

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

<p>(1) Right to Protest; Exclusive Remedy. <u>(a) Any prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest to the appropriate chief procurement officer in the manner stated in subsection (2)(a) below within fifteen days of the date of issuance of the Invitation For Bids or Requests for Proposals or other solicitation documents, whichever is applicable, or any amendment thereto, if the amendment is at issue. An Invitation for Bids or Request for Proposals or other solicitation document, not including any amendment thereto, is deemed to have been issued on the date any required notice of the issuance is given in accordance with this code.</u></p>	<p>Additional sentence brings code into line with South Carolina case law. See Attachment "C".</p>
<p><u>(b) Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest to the appropriate chief procurement officer in the manner stated in subsection (2)(b) below within ten fifteen days of the date <u>award or notification of intent to award, whichever is earlier</u>, is posted in accordance with this code; provided that any matter which could have been raised under subparagraph (a) above as a protest of the solicitation may not be raised as a protest of the intended award or award of a contract.</u></p>	<p>STREAMLINE PROCUREMENTS BY 5 DAYS: For overview, see Attachment "D"</p> <p>Second change simply codifies a generally understood, but occasionally misapplied, rule. Reference <u>Medicaid Transportation</u>. In <u>Protest of Councils on Aging</u>, Case No. 1997-12, the Panel ruled "that, under the statutory scheme set forth in §11-35-4210, the solicitation and the Notice of Intent to Award are separate and distinct actions which trigger distinctive protest periods. In this case, Protestants are challenging the legality of the Notice of Intent to Award and any resulting contracts. It is well settled that if any element of a contract is illegal, the entire contract becomes illegal. <u>The Panel finds that if a Notice of Intent to Award is issued pursuant to an illegal solicitation, then the entire contract will be rendered illegal. A protest of the legality of a Notice of Intent and resulting contract is timely if it is filed within fifteen days of the Notice of Intent to Award as specified in the statute.</u> For this reason, the Panel denies the Respondents' motion to dismiss and finds the protest to be timely under § 11-35-4210." (emphasis added). The suggested change in intended to reverse this result. This change is appropriate because this holding is inconsistent with the Code's approach to forcing vendors to raise concerns with the solicitation prior to award.</p>
<p><u>(c) The rights and remedies granted in this article to a disappointed bidders, offerors, contractors, or subcontractors, either actual or prospective, are to the exclusion of all other rights and remedies of such disappointed bidders, offerors, contractors, or subcontractors against the State at common law or otherwise for the loss or potential loss of an award of a contract under the South Carolina Consolidated Procurement Code.</u></p>	<p>Currently, this statute makes the code's protest process an exclusive remedy for "disappointed bidders." While clearly exclusive for actual offerors and successful contractors, this provision does not clearly make the process an exclusive remedy for prospective offerors. Suggested changes should close this loophole.</p> <p>Deletion of last phrase is to eliminate any limitation upon the exclusivity clause.</p>
<p><u>(d) The rights and remedies granted by subsection (1) above and subsection 11-35-4410(1)(b) are not available for contracts with an actual or potential</u></p>	<p>TECHNICAL CHANGE: The protest threshold has been moved from the provision</p>

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

value of up to fifty thousand dollars.	addressing small purchases (11-35-1550) to the provision addressing protests (this one). This change also increases the protest threshold from \$25,000 to \$50,000.
(2) Protest Procedure. (a) A protest under subsection (1)(a) above shall be in writing, filed with submitted to the appropriate chief procurement officer, and shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided. <u>A protest must be received by the appropriate chief procurement officer within the time limits established by subsection (1) above.</u>	Change codifies a matter that used to be problematic. The protest deadline is triggered when the CPO is given the protest, not when it is mailed.
(b) A protest under subsection (1)(b) above shall be in writing and must be received by the appropriate chief procurement officer within the time limits established by subsection (1)(b) above. At any time after filing a protest, but no later than twenty days after the date award or notification of intent to award, whichever is earlier, is posted in accordance with this code, a protestant may amend a protest submitted within the time limits established by subsection (1)(b) above. A protest, including any amendments, shall set forth both the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided.	STREAMLINE PROCUREMENTS BY 5 DAYS: The process is streamlined by shortening the protest period from 15 to 10 days. To insure that vendors are not disadvantaged, they are given 10 additional days to amend their protest to flesh out any issues they discover while reviewing the state's documents. For overview, see Attachment "D"
(3) Duty and Authority to Attempt to Settle Protests. Prior to commencement of an administrative review as provided in subsection (4), the appropriate chief procurement officer, the head of the purchasing agency, or designees thereof <u>may shall attempt</u> to settle by mutual agreement a protest of an aggrieved bidder, offeror, contractor, or subcontractor, actual or prospective, concerning the solicitation or award of the contract. The appropriate chief procurement officer, the head of the purchasing agency, or designees thereof shall have the authority to approve any settlement reached by mutual agreement.	The first change is offered because in many protests, especially award protests, any effort at settlement is simply a waste of time. The second change reflects long standing practice that only a CPO can approve a protest settlement.
(4) Administrative Review and Decision. If in the opinion of the appropriate chief procurement officer, after reasonable attempt, a protest cannot be settled by mutual agreement, the appropriate chief procurement officer, <u>or his designee,</u> shall promptly conduct an administrative review and shall issue a decision in writing within ten days of completion of the review. The decision shall state the reasons for the action taken.	Change simply clarifies that CPO's can designate their duty to administratively review protests.
(5) Notice of Decision. A copy of the decision under subsection (4) of this section along with a statement of appeal rights under Section 11-35-4210(6) shall be mailed or otherwise furnished immediately to the protestant and any other party intervening. The appropriate chief procurement officer, <u>or his designee,</u> shall also post a copy of the decision at a date and place communicated to all parties participating in the administrative review, and such posted decision shall indicate the date of posting on its face and shall be accompanied by a statement of the right to appeal provided in Section 11-35-4210(6).	Change simply clarifies that CPO's can designate their duty to administratively review protests.
(6) Finality of Decision. A decision under subsection (4) of this section shall be final and conclusive, unless fraudulent, or unless any person adversely affected by the decision requests a further administrative review by the Procurement Review Panel under Section 11-35-4410(1) within ten days of posting of the decision in accordance with Section 11-35-4210(5). The request for review shall be directed to the appropriate chief procurement officer, who shall forward the request to the panel, or to the Procurement Review Panel and shall be in writing, setting forth the reasons why the person disagrees with the decision of the appropriate chief procurement officer. The person may also request a hearing before the Procurement Review Panel. <u>The appropriate chief procurement officer and any affected governmental body</u>	BOARD & AGENCY AS PARTY TO REVIEW PROCESS

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

shall be provided the opportunity to fully participate in any subsequent review or appeal, whether administrative or judicial.	
(7) <u>Automatic Stay of Procurement During Protests.</u> In the event of a timely protest under subsection (1) above, the State shall not proceed further with the solicitation or award of the contract until <u>ten days</u> after a decision is <u>postrendered</u> by the appropriate chief procurement officer, or, in the event of timely appeal to the Procurement Review Panel, until a decision is rendered by the panel; provided, however, that solicitation or award of a protested contract will not be stayed if the appropriate chief procurement officer, after consultation with the head of the using agency, makes a written determination that the solicitation or award of the contract without <u>further</u> delay is necessary to protect the best interests of the State.	TECHNICAL CHANGE: Brings statute into line with long standing practice.
(8) <u>Notice of CPO Address.</u> Notice of the appropriate chief procurement officer's address shall be included in every notice of an intended award and in every invitation for bids, request for proposals, or other solicitation documents.	This change requires all agencies to notify vendors of the addresses they need in order to protest.
SECTION 11-35-4220. Authority to debar or suspend.	
(1) Authority. After reasonable notice to the person or firm involved, and a reasonable opportunity for such person or firm to be heard, the appropriate chief procurement officer shall have the authority to debar a person for cause from consideration for award of contracts <u>or subcontracts</u> , provided that doing so is in the best interest of the State and there is probable cause for debarment. The appropriate chief procurement officer may also suspend a person or firm from consideration for award of contracts <u>or subcontracts</u> during an investigation where there is probable cause for debarment. The period of debarment or suspension shall be as prescribed by the appropriate chief procurement officer.	Change expressly extends debarment authority to subcontractors.
(2) Causes for Debarment or Suspension. The causes for debarment or suspension shall include, but not be limited to, the following:	
(a) conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;	
(b) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or professional honesty which currently, seriously, and directly affects responsibility as a state contractor;	
(c) conviction under state or federal antitrust laws arising out of the submission of bids or proposals;	
(d) violation of contract provisions, as set forth below, of a character which is regarded by the appropriate chief procurement officer to be so serious as to justify debarment action:	
(i) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or	
(ii) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided, that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;	
(e) violation of an order of a <u>Chief Procurement Officer</u> or the Procurement Review Panel; and	The vast majority of CPO orders are not appealed. This change allows debarment of a vendor that violates a CPO order.
(f) any other cause the appropriate chief procurement officer determines to be so serious and compelling as to affect responsibility as a state contractor <u>or</u>	Change expressly extends debarment authority to subcontractors.

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

subcontractor, including debarment by another governmental entity for any cause listed herein.	
(3) Decision. The appropriate chief procurement officer shall issue a written decision to debar or suspend within ten days of the completion of his administrative review of the matter. The decision shall state the action taken, the specific reasons therefore, and the period of debarment or suspension, if any.	
(4) Notice of Decision. A copy of the decision under subsection (3) of this section and a statement of appeal rights under Section 11-35-4220(5) shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other party intervening. The appropriate chief procurement officer shall also post a copy of the decision at a time and place communicated to all parties participating in the administrative review and such posted decision shall indicate the date of posting on its face and shall be accompanied by a statement of the right to appeal provided in Section 11-35-4220(5).	
(5) Finality of Decision. A decision under subsection (3) of this section shall be final and conclusive, unless fraudulent, or unless the debarred or suspended person requests further administrative review by the Procurement Review Panel under Section 11-35-4410(1), within ten days of the posting of the decision in accordance with Section 11-35-4220(4). The request for review shall be directed to the appropriate chief procurement officer, who shall forward the request to the Panel, or to the Procurement Review Panel and shall be in writing, setting forth the reasons why the person disagrees with the decision of the appropriate chief procurement officer. The person may also request a hearing before the Procurement Review Panel. <u>The appropriate chief procurement officer and any affected governmental body shall be provided the opportunity to fully participate in any subsequent review or appeal, whether administrative or judicial.</u>	BOARD & AGENCY AS PARTY TO REVIEW PROCESS
(6) Debarment constitutes debarment of all divisions or other organizational elements of the contractor, unless the debarment decision is limited by its terms to specific divisions, organizational elements, or commodities. <u>The debarring official may extend the debarment decision to include any principals and affiliates of the contractor if they are (1) Specifically named; and (2) Given written notice of the proposed debarment and an opportunity to respond. As used in this section, the term "affiliates" means business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, (1) either one controls or has the power to control the other, or (2) a third party controls or has the power to control both. Indications of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the debarment, suspension, or proposed debarment of a contractor which has the same or similar management, ownership, or principal employees as the contractor that was debarred, suspended, or proposed for debarment. As used in this section, the term "principals" means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity, including, but not limited to, a general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions.</u>	Adapted from the Federal Acquisition Regulations, this language is added to insure that contractors cannot circumvent a debarment simply by dissolving a business and starting a new one. Essentially, this change is directed towards the innumerable shell games businesses can play.
SECTION 11-35-4230. Authority to resolve contract and breach of contract controversies.	
(1) Applicability. This section applies to controversies between a	TECHNICAL CHANGE: According to 11-

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

<p>governmental bodythe State and a contractor or subcontractor, when the subcontractor is the real party in interest, which arise under or by virtue of a contract between them including, but not limited to, controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission. The procedure set forth in this section shall constitute the exclusive means of resolving a controversy between a governmental bodythe State and a contractor or subcontractor, <u>when the subcontractor is the real party in interest</u>, concerning a contract solicited and awarded under the provisions of the South Carolina Consolidated Procurement Code.</p>	<p>35-40, the code applies to "governmental bodies". This change harmonizes these two provisions.</p>
<p>(2) Request for Resolution; Time for Filing. Either the contracting state agency or the contractor or subcontractor when the subcontractor is the real party in interest may initiate resolution proceedings before the appropriate chief procurement officer by submitting a request for resolution to the appropriate chief procurement officer in writing setting forth the <u>general specific</u> nature of the controversy and the <u>specific</u> relief requested with enough particularity to give notice of everythe issues to be decided. A request for resolution of contract controversy must be filed within one year of the date the contractor last performs work under the contract; provided, however, that in the case of latent defects a request for resolution of a contract controversy must be filed within <u>three</u> years of the date the requesting party first knows or should know of the grounds giving rise to the request for resolution.</p>	<p>The Procurement Review Panel has adopted a <u>very</u> liberal approach to the level of specificity with which a protestant must allege its protest. Because the applicable language in the protest statute is identical to the applicable language in the contract dispute paragraph, the change is suggested in order to differentiate the two. Fairness demands that allegations regarding contract breaches be more detailed than the standard established by the Panel for protests.</p>
<p>(3) Duty and Authority to Attempt to Settle Contract Controversies. Prior to commencement of an administrative review as provided in subsection (4), the appropriate chief procurement officer, <u>or his designee</u>, shall attempt to settle by mutual agreement a contract controversy brought under this section. The appropriate chief procurement officer shall have the authority to approve any settlement reached by mutual agreement.</p>	<p>Change simply clarifies that CPO's can delegate their duty to administratively review disputes.</p>
<p>(4) Administrative Review and Decision. If, in the opinion of the appropriate chief procurement officer, after reasonable attempt, a contract controversy cannot be settled by mutual agreement, the appropriate chief procurement officer, <u>or his designee</u>, shall promptly conduct an administrative review and shall issue a decision in writing within ten days of completion of the review. The decision shall state the reasons for the action taken.</p>	<p>Change simply clarifies that CPO's can delegate their duty to administratively review disputes.</p>
<p>(5) Notice of Decision. A copy of the decision under subsection (4) of this section and a statement of appeal rights under Section 11-35-4230(6) shall be mailed or otherwise furnished immediately to all parties participating in the administrative review proceedings. The appropriate chief procurement officer shall also post a copy of the decision at a time and place communicated to all parties participating in the administrative review, and such posted decision shall indicate the date of posting on its face and shall be accompanied by a statement of the right to appeal provided in Section 11-35-4230 (6).</p>	
<p>(6) Finality of Decision. A decision under subsection (4) of this section shall be final and conclusive, unless fraudulent, or unless any person adversely affected requests a further administrative review by the Procurement Review Panel under Section 11-35-4410 (1) within ten days of the posting of the decision in accordance with Section 11-35-4230 (5). The request for review shall be directed to the appropriate chief procurement officer who shall forward the request to the panel or to the Procurement Review Panel and shall be in writing setting forth the reasons why the person disagrees with the decision of the appropriate chief procurement officer. The person may also request a hearing before the Procurement Review Panel. <u>The appropriate</u> chief procurement officer and any affected governmental body shall be</p>	<p>BOARD & AGENCY AS PARTY TO REVIEW PROCESS</p>

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

provided the opportunity to fully participate in any subsequent review or appeal, whether administrative or judicial.	
SECTION 11-35-4330. Frivolous protests.	
(1) Signature on Protest Constitutes Certificate. The signature of an attorney or party on a request for review, protest, motion, or other document constitutes a certificate by the signer that the signer has read such document, that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass, limit competition, or to cause unnecessary delay or needless increase in the cost of the procurement or of the litigation.	
(2) Sanctions for Violations. If a request for review, protest, pleading, motion, or other document <u>that is filed with a chief procurement officer or the Procurement Review Panel</u> is signed in violation of this subsection on or after appeal to the Procurement Review Panel , the Procurement Review Panel, upon motion or upon it's own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the protest, pleading, motion, or other paper, including a reasonable attorney's fee.	
(3) Filing. Any motion regarding a matter that is not otherwise on appeal may not be filed until after a final decision has been issued by the appropriate chief procurement officer. A motion for sanctions pursuant to this section shall be filed with the Panel no later than 15 days after the later of either (a) the filing of a request for review, protest, motion, or other document signed in violation of this section, or (b) the issuance of an order that addresses the request for review, protest, motion, or other document that is the subject of the motion for sanctions.	
SECTION 11-35-4420. Appeals	
The appropriate chief procurement officer and any affected governmental body shall be provided the opportunity to fully participate as a party in any matter pending before the Procurement Review Panel and in any appeal of any decision of the Procurement Review Panel, whether administrative or judicial.	BOARD & AGENCY AS PARTY TO REVIEW PROCESS
SECTION 11-35-4610. Definitions of terms used in this article.	
As used in this article, unless the context clearly indicates otherwise:	
(1) "Cooperative purchasing" means procurement conducted by, or on behalf of, more than one public procurement unit, or by a public procurement unit with an external procurement activity.	
(2) "External procurement activity" means:	
(a) any buying organization not located in this State which would qualify as a public procurement unit;	
(b) buying by the United States government.	

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

(3) "Local public procurement unit" means any political subdivision or unit thereof <u>of this state which expends public funds for the procurement of supplies, services, information technology, or construction.</u>	TECHNICAL CHANGE: Change made to make sure code consistently applies uniformly to IT transactions.
(4) "Mandatory opting" is the requirement for a local procurement unit to choose whether to utilize a state contract before it is established as prescribed in regulation by the board.	
(5) "Public procurement unit" means either a local public procurement unit, <u>or a state public procurement unit, or any not-for-profit entity comprised of more than one such unit.</u>	Change allows not-for-profit organizations whose membership is made of "public procurement units" to sponsor cooperative purchases. One example is NASPO.
(6) "State public procurement unit" means the offices of the chief procurement officers, <u>and any other purchasing agency of this State, and any unit of state government.</u>	Change is made to insure that entities like the General Assembly, which are not covered by this Code, can purchase of cooperative purchasing agreements in which a Chief Procurement Officer participates.
SECTION 11-35-4810. Cooperative purchasing authorized.	
(1) Any public procurement unit may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any supplies, services, <u>information technology, or construction with one or more public procurement units or external procurement activities in accordance with an agreement entered into between the participants. Such cooperative purchasing may include, but is not limited to, joint or multi-party contracts between public procurement units and open-ended state public procurement unit contracts which shall be made available to local public procurement units, except as provided in Section 11-35-4820 or except as may otherwise be limited by the appropriate chief procurement officer</u> board through regulations.	TECHNICAL CHANGE: Change made to make sure code consistently applies uniformly to IT transactions.
(2) In accordance with the requirements of this section, a state public procurement unit subject to this code may participate in, sponsor, conduct, or administer cooperative purchasing even though the procurement is <u>exempted from, not subject to, or otherwise not conducted in accordance with this code only if the appropriate chief procurement officer determines in writing that participation is in the best interest of the state and that the source selection method and protest process applicable to the procurement are either generally equivalent to the requirements of this code or otherwise embody sound principles of appropriately competitive procurement.</u>	First sentence: By adding this sentence, we've exempted ourselves from the code's competitive requirements. In turn, we prevent abuse of that freedom by requiring that, in order to participate, the entity administering the cooperative purchase must have used source selection methods generally equivalent to those we would have used. The requirement for a written determination is to place control over and responsibility for such activity with the CPO.
(3) A state public procurement unit may enter into an agreement to participate in a multi-state cooperative purchase only with the written approval of the appropriate chief procurement officer. A state public procurement unit may acquire items under contracts established by multi-state cooperative purchasing after publishing notice of its intent to participate for thirty days in South Carolina Business Opportunities or through a means of central electronic advertising as approved by the Designated Board Office. Supplies procured by a state public procurement unit under contracts established by multi-state cooperative purchasing must be distributed to the state public procurement unit through vendors authorized to do business in South Carolina. However, thirty days notice of a proposed multi-state solicitation shall be provided through central advertising and such contracts may be only awarded to manufacturers who will be distributing the products to South	

**Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03**

Carolina governmental bodies through South Carolina vendors.	
SECTION 11-35-4830. Sale, acquisition or use of supplies by a public procurement unit.	
Any public procurement unit may sell to, acquire from, or use any supplies belonging to another public procurement unit or external procurement activity independent of the requirements of Article 5 (Source Selection and Contract Formation) and Article 15 (Supply Management) of this code in accordance with the requirements of Articles 5 and 15 of this chapter ; provided, that such procurement shall take place only when the procuring entities have good reason to expect the intergovernmental procurement to be more cost effective than doing their own procurement.	Staff believes the stricken language was added in response to concerns by the printing industry with the state printing office. This change will reinstate the Code's original approach of not applying all the code's assorted source selection methods to arrangements between public procurement units.
SECTION 11-35-4840. Cooperative use of supplies, or services, or information technology.	TECHNICAL CHANGE: Change made to make sure code consistently applies uniformly to IT transactions.
Any public procurement unit may enter into an agreement <u>independent of the requirements of Article 5 (Source Selection and Contract Formation) and Article 15 (Supply Management) of this code</u> in accordance with the requirements of Articles 5 and 15 of this chapter with any other public procurement unit or external procurement activity for the cooperative use of supplies, or services <u>or information technology</u> under the terms agreed upon between the parties; provided, that such cooperative use of supplies, or services <u>or information technology</u> shall take place only when the public procurement units have good reason to expect the cooperative use to be more cost effective than utilizing their own supplies and services.	Staff believes the stricken language was added in response to concerns by the printing industry with the state printing office. This change will reinstate the Code's original approach of not applying all the code's assorted source selection methods to arrangements between public procurement units.
SECTION 11-35-4870. Use of payments received by a supplying public procurement unit.	
All payments from any public procurement unit or external procurement activity received by a public procurement unit supplying personnel or services shall be governed by any provisions of law concerning nonbudgeted revenue of the recipient entity. <u>All payments received by a public procurement unit in connection with sponsoring or administering a cooperative purchase shall be governed by any provisions of law concerning nonbudgeted revenue of the recipient entity.</u>	This change is intended to allow MMO to generate revenue to offset the cost of sponsoring a cooperative purchasing agreement. For example, if MMO was the lead state on a multi-state cooperative purchase for paper, this provisions would allow MMO to recoup its costs.
SECTION 11-35-4890. Review of procurement requirement.	
To the extent possible, the chief procurement officers may collect information concerning the type, cost, quality, and quantity of commonly used supplies, services, <u>information technology</u> , or construction being procured or used by local public procurement units, which shall be required to respond appropriately as a precondition for participation in state contracts as governed by regulations promulgated by the board. The chief procurement officers shall make available all such information to any public procurement unit upon request.	TECHNICAL CHANGE: Change made to make sure code consistently applies uniformly to IT transactions.
SECTION 11-35-4910. Expanded participation in cooperative purchasing.	

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

Except as otherwise provided by regulation, a public procurement unit may, with the consent of the contractor, allow (a) organizations organized and operated exclusively for educational purposes and employees of such organizations, and (b) employees of South Carolina public procurement units to acquire supplies, services, or information technology through a cooperative purchasing contract provided that no public procurement unit bears any liability or responsibility in any way relating to the participation by such employees or organizations and that such participation is neither a requirement of the procurement nor a factor in any evaluation. An individual may acquire items through a cooperative purchasing contract only for personal use.	
SECTION 11-35-4920. Participation in Federal Supply Schedules.	
Independent of any other requirements of this Code, the appropriate chief procurement officer may authorize any governmental body to use the federal supply schedules of the United States General Services Administration to acquire supplies and information technology.	
SECTION 11-35-5220. Duties of the chief procurement officers.	
(1) Assistance from the Chief Procurement Officers. The chief procurement officers shall provide appropriate staffs to assist minority businesses with the procurement procedures developed pursuant to this code.	
(2) Special Publications. The chief procurement officers in cooperation with other appropriate private and state agencies may issue supplementary instructions designed to assist minority businesses with the state procurement procedures.	
(3) Source Lists. Chief procurement officers shall maintain special source lists of minority business firms detailing the products and services which they provide. These lists shall be made available to agency purchasing personnel.	
(4) Solicitation Mailing Lists. The chief procurement officers shall include and identify minority business on the state's bidders' list and shall ensure that these firms are solicited on an equal basis within nonminority firms.	
(5) Training Programs. The chief procurement officers shall work with appropriate state offices and minority groups in conducting seminars to assist minority business owners in learning how to do business with the State.	
(6) Fee Waivers. Upon request by an MBE certified by the Small and Minority Business Assistance Office, user or subscription fees for services provided by the chief procurement officers may be waived for an MBE.	NEW MBE INCENTIVES: For overview, see Attachment "E" & "F"
SECTION 11-35-5230. Regulations for negotiation with state minority firms.	
(A) The board shall promulgate regulations that designate such procurement contracts as it may deem appropriate for negotiation with certified, South Carolina-based minority firms, as defined by this subarticle. Among the criteria that shall be used to determine such designations are:	
(1) The total dollar value of procurement in South Carolina.	
(2) The availability of South Carolina-based minority firms.	
(3) The potential for breaking the contracts into smaller units, where necessary, to accommodate such firms.	
(4) Insuring that the State shall not be required to sacrifice quality of goods or services.	

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

(5) Insuring that the price shall have been determined to be fair and reasonable, and competitive both to the State and to the contractor and results in no loss to the State.	NEW MBE INCENTIVES: For overview, see Attachment "E" & "F"
(B)(1) Firms with state contracts that subcontract with minority firms shall be eligible for an income tax credit equal to four percent of the payments to minority subcontractors for work pursuant to a state contract. <u>Minority subcontractors shall be eligible for an income tax credit equal to four percent of the payments made by the contractor to the minority subcontractor for work pursuant to a state contract.</u> Such subcontractors must be certified as to the criteria of a minority firm as defined in Section 11-35-5010 of this code and any regulations which may be promulgated thereunder.	NEW MBE INCENTIVES: For overview, see Attachment "E" & "F"
(2) The tax credit is limited to a maximum of fiftytwo <u>twenty-five</u> thousand dollars annually. A firm shall be eligible to claim a tax credit for a period of five years from the date the first income tax credit is claimed.	
(3) Any firm desiring to be certified as a minority firm shall make application to the Small and Minority Business Assistance Office (SMBAO) as defined by Section 11-35-5270, on such forms as may be prescribed by that office.	
(4) Firms claiming the income tax credit shall maintain evidence of work performed for a state contract by minority subcontractors and shall present such evidence on a form and in a manner prescribed by the Department of Revenue at the time of filing its state income tax return and claim such credit at the time of filing. All records shall be available for audit by the Department of Revenue in accordance with prevailing tax statutes.	
SECTION 11-35-5240. Minority business enterprise (MBE) utilization plan, progress reporting requirements.	
(1) In order to emphasize the use of minority small businesses, each agency director shall develop a Minority Business Enterprise (MBE) Utilization Plan. <u>Each agency director's annual performance evaluation shall consider the agency's success in meeting the agency's MBE goals.</u> The MBE Utilization Plan shall include, but not be limited to:	NEW MBE INCENTIVES: For overview, see Attachment "E" & "F"
(a) The name of the governmental body;	
(b) A policy statement expressing a commitment by the governmental body to use MBE's in all aspects of procurement;	
(c) The name of the coordinator responsible for monitoring the MBE Utilization Plan;	
(d) Goals that include a reasonable percentage, but not less than ten (10%) per cent, of each governmental body's total procurements <u>dollar amount of funds to be expended with Minority Business Enterprises certified by the Office of Small and Minority Business Assistance directed toward minority vendors;</u>	NEW MBE INCENTIVES: For overview, see Attachment "E" & "F"
(e) Solicitation of certified qualified minority vendors, a current list of which shall be supplied by the Office of Small and Minority Business Assistance <u>General Services</u> , in each commodity category for which such minority vendor is qualified. The current listing of qualified minority vendors shall be made available by the Office of General Services <u>Designated Board Office</u> on a timely basis;	NEW MBE INCENTIVES: For overview, see Attachment "E" & "F"
(f) Procedures to be used when it is necessary to divide total project requirements into smaller tasks which will permit increased MBE participation;	
(g) Procedures to be used when the governmental body subcontracts the scope of service to another governmental body; the responsible governmental body may set goals for the subcontractor in accordance with the MBE goal and the responsible governmental body may allow the	

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

subcontractor to present a MBE Utilization Plan detailing its procedure to obtain minority business enterprise participation.	
(2) MBE utilization plans shall be submitted to the SMBAO for approval not later than July thirtieth, annually. Progress reports which include the following information shall be submitted to the SMBAO not later than thirty ten days after the end of each fiscal quarter.	
(a) Number of minority firms solicited;	
(b) Number of minority bids received;	
(c) Total dDollar amount of funds expended on contracts awarded to minority bids awardedfirms certified in accordance with Section 11-35-5230.	
(d) Total dollar amount of funds expended.	
(3) As used in this section, the phrase "total dollar amount of funds expended" means the total dollar amount of funds expended for the following expenditure object codes, or the equivalent, as defined by the Office of the Comptroller General:	
(i) Contractual services except for the following: Utilities, Telephone and telegraph, Contractual agreements with government/non-profit entities, Non-state employee travel, Reportable meals to non-state employees, Attorney fees-guardian an litem, Attorney fees-defense of indigents, Gross proceeds/legal settlements, Subcontracts with entities-matching funds, Contractual agreements with school districts, Insurance-administrative fee, Supervision of student teachers, Contractual services-commuting mileage reimbursement, Contractual services-lump sum, Tuition assistance, Federal retiree settlement, and Legal settlements;	
(ii) Supplies and materials except for the following: Indigent psychotropic medications, Revenue tax stamps, and Supplies-commuting mileage reimbursement;	
(iii) Fixed charges as follows: Rental-office equipment, Rental-copying equipment, Rental-data processing equipment, Rental-medical, scientific, and lab equipment, and Other fixed charges;	
(iv) Equipment except for the following items: Capital lease executory cost-equipment, Capital lease principal payments-equipment, Capital lease interest payments-equipment, Exhibits and collection, and Equipment-lump sum;	
(v) Permanent improvements as follows: Fee-architectural, engineering, and other, Basic equipment, Site development (non-depreciable land improvements), Depreciable land improvements, Construction-buildings and additions, Renovations-buildings and additions interior, Renovations utilities, Roofing-repairs and renovations, Renovations-building exteriors, Infrastructure and other construction projects, Intangible assets, Legal services-construction projects, Builders risk insurance, Other capital outlay costs, and Attorney fees-construction projects;	
(vi) Purchase for resale; and,	
(vii) Equipment, vehicles, and works or art/historical treasures (non-capitalizable).	
SECTION 11-35-5260. Annual report regarding contracts with certified small, minority, and women-owned businesses.	
The SMBAO Each governmental body shall report annually in writing to the governorboard concerning the number and dollar value of contracts awarded for that governmental body to any firm certified as a minority firm pursuant to Section 11-35-5230eligible minority businesses during the preceding fiscal year. These records shall be maintained to evaluate the progress of this program.	

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

SECTION 11-35-5270. Small and minority business assistance office.	
A Small and Minority Business Assistance Office (SMBAO) shall be established to assist the board and the Department of Revenue in carrying out the intent of this article. The responsibilities of the office shall include, but not be limited to, the following:	
(1) Assist the chief procurement officers and governmental bodies in developing policies and procedures which will facilitate awarding contracts to small and minority firms;	
(2) Assist the chief procurement officers in aiding small and minority-owned firms and community-based business in developing organizations to provide technical assistance to minority firms;	
(3) Assist with the procurement and management training for small and minority firm owners;	
(4) Assist in the identification of responsive small and minority firms;	
(5) Receive and process applications to be registered as a minority firm in accordance with Section 11-35-5230(B);	
(6) The SMBAO may revoke the certification of any firm which has been found to have engaged in any of the following:	
(a) fraud or deceit in obtaining the certification;	
(b) furnishing of substantially inaccurate or incomplete information concerning ownership or financial status;	
(c) failure to report changes which affect the requirements for certification;	
(d) gross negligence, incompetence, financial irresponsibility, or misconduct in the practice of his business; or	
(e) willful violation of any provision of this article.	
(7) After a period of one year, the SMBAO may reissue a certificate of eligibility provided acceptable evidence has been presented to the commission that the conditions which caused the revocation have been corrected.	
The Governor shall evaluate the role of this office within two years from the date of its creation and shall request recommendations of the State Reorganization Commission. The Governor may propose a more appropriate location of the office should the findings warrant change.	

**Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03**

ATTACHMENT "A"

Justification for budget thresholds for school districts.

Reference 11-35-70

Inflating a Fixed Dollar Amount in FY1984 into FY2002 Dollars

Fiscal Year	CPI	Procurement Limit
1984	101.8	\$75,000,000
1985	105.8	\$77,946,955
1986	108.8	\$80,157,171
1987	111.2	\$81,925,344
1988	115.8	\$85,314,342
1989	121.2	\$89,292,731
1990	127.0	\$93,565,815
1991	133.9	\$98,649,312
1992	138.2	\$101,817,289
1993	142.5	\$104,985,265
1994	146.2	\$107,711,198
1995	150.4	\$110,805,501
1996	154.5	\$113,826,130
1997	158.9	\$117,067,780
1998	161.7	\$119,130,648
1999	164.5	\$121,193,517
2000	169.3	\$124,729,862
2001	175.1	\$129,002,947
2002	180.4	\$132,873,035
2003	183.5	\$135,191,552 LGS 12/6/02

Note: Calculations made by the Board of Economic Advisors.

Sources: U.S. Dept. of Labor, Bureau of Labor Statistics;
S.C. Board of Economic Advisors

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

ATTACHMENT "A (PAGE 2)"

Justification for increasing budget thresholds for school districts.
Reference 11-35-70

SC School Districts - FY
2000-2001
Expenditures
Greater than
\$75,000,000
Department of Education
Mellanie Jinnette

08/01/2002

Total budget FY02 subject 11-35-70 @
\$150M

District Name	Expenditure Amount	22		
Greenwood 50	\$ 62,010,270			
Spartanburg 2	\$ 63,770,025			
Sumter 17	\$ 70,282,883			
Orangeburg 5	\$ 70,928,608			
York 4	\$ 71,222,754			
Kershaw	\$ 73,655,242			
Cherokee	\$ 74,769,738	1		no
Lexington 2	\$ 78,974,674			
Sumter 02	\$ 80,147,647	0		
Spartanburg 6	\$ 86,894,558	1		no
Darlington	\$ 88,060,612	1		no
Anderson 5	\$ 88,297,977	1		no
Oconee	\$ 89,277,099	1		no
Lancaster	\$ 97,795,766	1		no
Florence 1	\$ 107,060,058	1		no
Dorchester 2	\$ 118,711,345	1		no
York 3	\$ 119,063,740	1		no
Pickens	\$ 121,420,960	1		no
Georgetown	\$ 122,283,678	1		no
Lexington 5	\$ 125,561,707	1	\$100,000,000	no
Richland 2	\$ 152,980,770	1	\$108,763,604	no
Spartanburg 7	\$ 155,370,518	1	est <\$150M	no
Beaufort	\$ 165,755,563	1	\$119,600,000	no
Aiken	\$ 173,511,432	1	\$205,678,903	yes
Lexington 1	\$ 185,858,359	1	est >\$150M	yes
Berkeley	\$ 217,678,196	1		yes
Horry	\$ 242,831,489	1		yes
Richland 1	\$ 306,952,099	1		yes
Charleston	\$ 357,559,099	1		yes

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

Greenville	\$	522,618,903	1	yes
------------	----	-------------	---	-----

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

ATTACHMENT "B"

Justification for increasing base certification & small purchase thresholds.

Reference 11-35-1510, -1520, -1550

Inflating a Fixed Dollar Amount in FY1981 into FY2003 Dollars

Fiscal Year	Procurement CPI	Base
1981	86.6	\$2,500
1982	94.1	\$2,717
1983	98.2	\$2,835
1984	101.8	\$2,939
1985	105.8	\$3,054
1986	108.8	\$3,141
1987	111.2	\$3,210
1988	115.8	\$3,343
1989	121.2	\$3,499
1990	127.0	\$3,666
1991	133.9	\$3,865
1992	138.2	\$3,990
1993	142.5	\$4,114
1994	146.2	\$4,221
1995	150.4	\$4,342
1996	154.5	\$4,460
1997	158.9	\$4,587
1998	161.7	\$4,668
1999	164.5	\$4,749
2000	169.3	\$4,887
2001	175.1	\$5,055
2002	178.2	\$5,144
2003	183.5	\$5,299

Note:

Calculations made by the Board of Economic Advisors.

Sources:

U.S. Dept. of Labor, Bureau of Labor Statistics;
S.C. Board of Economic Advisors

**Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03**

ATTACHMENT "C"

Justification for increasing protest threshold

References 11-35-1520 & Article 17

Protest

7/1/99 to 6/30/02

	SPO	SPO	CIO	CIO	OSE	OSE
contract value	#	% to total	#	% to total	#	% to total
<\$50,000	14	15%	8	13%	n/a	
\$50,000 - \$100,000	17	18%	2	3%	n/a	
>\$100,000	64	67%	53	84%	n/a	
total	95	100%	63	100%		

**Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03**

ATTACHMENT "D"

Justification for reducing the delay in award cycle

Reference 11-35-1520 & -1550

act fy03

Activity SPO &

CIO

	<\$10,000	\$10,000- \$50,000	\$50,000 -\$100,000	>\$100,000	total
FY 00	461	388	157	585	1,591
FY 01	203	242	94	328	867
FY 02	158	186	91	278	713
7/02 to 12/5/02	77	57	23	83	240
total	899	873	365	1,274	3,411
% of total	26.36%	25.59%	10.70%	37.35%	100%
% <\$50,000		51.95%	10.70%	37.35%	100%

**Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03**

ATTACHMENT "E"

Justification for enhancement of MBE program.

Reference Title 11, Chapter 35, Article 19

MBE	total expenditures	projected expenditures	% of goal	total number of MBES
FY 00	\$18,155,569	\$28,253,731	64%	815
FY01	\$22,362,155	\$23,811,951	94%	825
FY02	\$28,254,910	\$24,628,586	115%	959

	total expenditures	controllable dollars	% of expenditures
FY 00	\$18,155,569	\$791,628,313	2%
FY 01	\$22,362,155	\$393,387,980	6%
FY 02	\$28,254,910	\$430,636,213	7%

Consolidated Procurement Code - Suggested Changes by Board's Procurement Staff
Discussion Draft For Meeting of 01/10/03

ATTACHMENT "F"

Justification for enhancement of MBE program

References Title 11, Chapter 35, Article 19

MBE tax credit

Department of Revenue

(DOR)

December 6, 2002

time frame	#	amount	entity
1/1/00-6/30/00	n/a	\$19,884	corporate
1/1/00-11/13/2000	10	\$20,768	individual
7/1/00-6/30/01	6	\$65,533	corporate
1/1/01-12/31/01	13	\$32,959	individual

most recent information available from DOR

corporate time January 1, 2000 to June 30, 2001

individual time calendar year 2000 less info from November
14, 2000 to December 31, 2000

individual time calendar year 2001

source Karen Moton 8-5466

SOUTH CAROLINA STATE LIBRARY



0 01 01 0339610 6